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ABSTRACT

This transcript presents testimony given at a House of Representatives committee hearing on the reauthorization of the Individuals with Disabilities Education Act. Included is the text of an amendment, the Braille Literacy Amendment, which is intended to improve the literacy rate among children with visual impairments. This amendment calls for an individual assessment of each student's literacy skills, establishes teacher competency standards for Braille instruction, and facilitates the production of Braille and digital texts and other materials. Other issues addressed in the hearing include needs of children with attention deficit hyperactivity disorder, issues concerned with the inclusion of students with disabilities in regular classes, personnel development, and discipline of students with disabilities. Organizations represented by statements either delivered or prepared include the American Association of School Administrators, National Association of State Directors of Special Education, and the National School Boards Association. Congressmen involved in the hearing included: Major R. Owens (New York); James A. Traficant, Jr. (Ohio); Charlie Rose (North Carolina); Robert C. Scott (Virginia); and Cliff Stearns (Florida). (DB)

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HEARING ON THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

ED 377 650

HEARING

BEFORE THE

SUBCOMMITTEE ON SELECT EDUCATION
AND CIVIL RIGHTS

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

HEARING HELD IN WASHINGTON, DC, APRIL 14, 1994

Serial No. 103-86

Printed for the use of the Committee on Education and Labor

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HEARING ON THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

THURSDAY, APRIL 14, 1994

House of Representatives,
Subcommittee on Select
Education and Civil Rights,
Committee on Education and Labor,
Washington, DC.

The subcommittee met, pursuant to call, at 9:30 a.m. Room 2261 Rayburn House Office Building, Hon. Major R. Owens, Chairman, presiding.

Members present: Representatives Owens, Scott, Ballenger, and Barrett.

Staff present: Maria Cuprill; Braden Goetz; Wanser Green; John McClain; Sally Lovejoy; Hans Meeder; and Chris Krese.

Chairman Owens. The Subcommittee on Select Education and Civil Rights is now in session. Today's hearing is the subcommittee's third on the reauthorization of the Individuals with Disabilities Education Act. We are pleased to hear this morning from several Members of Congress who have taken an active interest in the Act and have put forward proposals and ideas to improve it.

In addition, our second panel will provide us with a useful State and local perspective on IDEA as we hear from administrators responsible for carrying out the provisions of the legislation.

This year's reauthorization of IDEA must not merely tinker on the edges. There must be fundamental reform. We welcome the contributions of today's witnesses as we work toward building consensus on the elements that must be included in such a reform effort. We look forward to working with them and others on the reauthorization in the months to come.

[The prepared statement of Hon. Major R. Owens follows:]

Statement of Hon. Major R. Owens, a Representative in Congress from the State of New York

Today's hearing is this subcommittee's third hearing on the Reauthorization of the Individuals With Disabilities Education Act.

We are pleased to hear this morning from several Members of Congress who have taken an active interest in the Act and have put forward proposals and ideas to improve it.

In addition, our second panel will provide us with a useful State and local perspective on IDEA as we hear from administrators responsible for carrying out the provisions of the legislation.

This year's reauthorization of IDEA must not merely tinker on the edges; there must be fundamental reform. We welcome the contributions of today's witnesses as we work toward building consensus on the elements that must be included in such a reform effort. We look forward to working with them and others on the reauthorization in the months to come.

Chairman OWENS. I yield to Mr. Ballenger for an opening statement.

Mr. BALLENGER. Thank you, Mr. Chairman. During today's hearings we will hear about some of the most pressing issues facing Congress in the upcoming IDEA reauthorization: violence, over-litigation, and over-regulation.

From all corners of the country we have heard disturbing reports of violence in our Nation's schools. When the students with disabilities are the source of this violent behavior, the situation becomes even more complex.

The stay-put provisions of IDEA make it a very difficult to remove a student with a disability that has attacked a teacher or a student or who has brought a weapon into the classroom. Even though we understand the reasoning behind the stay-put provision to protect the students with disabilities from having their educational placement change without regard to their individualized education plan, this reasoning is hard to defend when the disabled student threatens the life and safety of other students and teachers.

When these protections were enacted in 1975, I doubt if anyone thought in terms of students carrying dangerous weapons into the classroom. I believe that if we work together we can craft a solution that will maintain necessary rights and protections of disabled students, but also give school administrators the tools they need to maintain a safe learning environment.

And, secondly, we need to look at ways of reducing the amount of litigation in the special education system. As we have heard from many constituents and witnesses, the system is far too confrontational and prone to costly legal proceedings.

We may be able to bring mediation processes into the system that could resolve more disputes before they enter the formal administrative and court phases. And to the extent that we can minimize the involvement of attorneys, we can devote more resources to actually serving children instead of paying attorneys' fees.

And, finally, Congress has to recognize that each provision of IDEA and each regulation derived therefrom ultimately impacts the education of students with disabilities. Unlike much Federal education legislation, this program has directly affected the formation and direction of the State special education programs.

And as we review the existing law and regulations and new proposals brought before us, we must carefully consider what the impact of our policies will be at the school level. It doesn't help our cause if teachers and other service providers spend as much time filling out paperwork and studying regulations as they do teaching and working with children.

We must identify and reduce unnecessary regulations that distract from these professionals goals, from the immediate goal that we all share: providing the best possible education to each student with a disability.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Cass Ballenger follows:]

Statement of Hon. Cass Ballenger, a Representative in Congress from the State of North Carolina

Mr. Chairman, during today's hearing we will hear about some of the most pressing issues facing Congress in the upcoming IDEA reauthorization—violence, over-litigation, and over-regulation.

From all corners of the country, we have heard disturbing reports of violence in our Nation's schools. When students with disabilities are the source of this violent behavior, the situation becomes even more complex. The "stay-put" provisions of IDEA make it very difficult to remove a student with a disability that has attacked a teacher or a student or who has brought a weapon into the classroom. Even though we understand the reasoning behind the "stay-put" provision—to protect students with disabilities from having their educational placement changed without regard to their Individualized Education Plan—this reasoning is hard to defend when the disabled student threatens the life and safety of other students and teachers. When these protections were enacted in 1975, I doubt anyone thought in terms of students carrying dangerous weapons into the classroom. I believe that, if we work together, we can craft a solution that will maintain necessary rights and protections of disabled students, but also give school administrators the tools they need to maintain a safe learning environment.

Secondly, we need to look at ways of reducing the amount of litigation in the special education system. As we have from many constituents and witnesses, the system is far too confrontational and prone to costly legal proceedings. We may be able to bring mediation processes into the system that could resolve more disputes before they enter the formal administrative and court phases. And to the extent we can minimize the involvement of attorneys, we can devote more resources to actually serving children instead of paying attorney's fees.

Finally, Congress has to recognize that each provision of the IDEA and each regulation derived from the IDEA ultimately impacts the education of students with disabilities. Unlike much Federal education legislation, the IDEA has directly affected the formation and direction of the State special education systems. As we review the existing law and regulations and new proposals brought before us, we must carefully consider what the impact of our policies will be at the school level. It doesn't help our cause if teachers and other service providers spend as much time filling out paperwork and studying regulations as they do teaching and working with children. We must identify and reduce unnecessary regulations that distract these professionals from the immediate goal that we all share—providing the best possible education to each student with a disability.

Chairman OWENS. Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. In deference to our witnesses, I would like to submit my statement for the record, but would want to point out that we need to make the regulations more clear to avoid situations similar to the one we're having in Virginia now where the IDEA is being withheld over a discussion as to whether or not the children under the IDEA program can be suspended for matters unrelated to their disability.

Virginia now does this. I, frankly, think that the legislation ought to be written in such a way that there is no question one way or the other. Frankly, my preference is that no students be kicked out of their educational opportunity. They may have to be removed from the classroom for the protection of others, but there ought to be an alternative setting so that they can continue their education. That way, the other students are not endangered and students can continue their education.

Thank you, Mr. Chairman.

Chairman OWENS. Thank you. The gentleman's opening statement will be entered into the record in its entirety.

[The prepared statement of Hon. Robert C. Scott follows:]

STATEMENT OF HON. ROBERT C. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF VIRGINIA

Thank you Mr. Chairman. Let me first commend you on scheduling this hearing on reauthorization of the Individuals With Disabilities Education Act. Through the series of hearings you have held to hear from experts and other people with direct knowledge of the IDEA program, you have provided us with an excellent foundation upon which to address issues related to the reauthorization of this program.

I join you in welcoming our esteemed colleagues from the House of Representatives who will testify this morning. I am pleased, as I know you are, to see their interest in the program. I look forward to hearing the testimony from our colleagues and that of the other witnesses you have assembled today.

In the prior hearings you have held, we have heard from advocates and parents of children with disabilities. They have brought to our attention their concerns about inflexibilities in the current program which limit the abilities of teachers and students to achieve their goals. They have also told us about concerns with the rapid increase in the number of minorities being referred into special education programs while the number of whites going into such programs is declining; they have told us about the inadequacies in teacher training and in aids and tools they are given to address the needs of children with disabilities, and the resulting "warehousing" of these children in unproductive settings; they have told us about the higher percentage of school dropouts among special education students as compared to students generally and the problem of the funding for special education being geared more toward the exclusion of children from regular classrooms than toward meeting their needs in the regular classroom.

I had the opportunity to conduct a followup meeting with one of my constituents, Mrs. Sharon Retos of Hampton, Virginia, who testified during the last hearing you conducted, Mr. Chairman. She further detailed for me the additional difficulties she has encountered in getting appropriate services for her child at the high school level as compared to the elementary and middle school level. As a result, I am now better prepared to work with you on addressing this problem in the program.

Today, we will hear more about such problems and more about ways in which we might effectively address them through this reauthorization process. I look forward to the information and to working with you, Mr. Chairman, in developing a program that is more sensitive to the individual needs of children with disabilities to assure that they reach their full potential to achieve their goals and aspirations as self-reliant, contributing citizens. Thank you.

Chairman OWENS. We are pleased to welcome three of our distinguished colleagues who bring a very practical kind of wisdom to the formidable task that we face as we start the reauthorization process of the Individuals with Disabilities Education Act.

We begin with the Honorable Charlie Rose, accompanied by Mrs. Rose; the Honorable James A. Traficant, Jr.; the Honorable Cliff Stearns; the Honorable James P.—he will not be joining us.

Gentlemen, you know the rules. We shall begin with Congressman Rose.

Mr. ROSE. Mr. Chairman, could I ask you to allow Mr. Traficant to go ahead of me? He has a pressing obligation. I do not.

Chairman OWENS. I didn't know that.

Mr. ROSE. If that's okay with you.

Chairman OWENS. Mr. Traficant.

STATEMENTS OF HON. JAMES A. TRAFICANT, JR.; HON. CHARLIE ROSE, ACCOMPANIED BY MRS. ROSE; AND HON. CLIFF STEARNS

Mr. TRAFICANT. I appreciate that. Thank you, Chairman Rose, and thank you, Chairman Owens and the members of the committee.

You know, I had submitted an amendment to the education goals program that was recently debated on the House floor that dealt with the blind community. Not all the blind community was in support of the language, although they were in support in principle of the goals of which the language attempted to attain.

With that in mind, I defer to the judgment of the Chairman, Mr. Owens, and to the committee, and I just simply withdrew that matter and now I am conferring with the respective organizations of the blind trying to come up with consensus language.

I ask, first of all, unanimous consent that my entire statement and accompanying material be placed into the record for your scrutiny.

Chairman OWENS. The gentleman's statement will be entered into the record.

Mr. TRAFICANT. I appreciate that. Just briefly, in 1968, there were approximately 20,000 visually impaired students. Four percent could read both Braille and large type. In 1993, there are over 50,000 visually impaired; 27 can read print, fewer than 9 percent can read Braille, and 40 percent cannot read at all.

One of the problems has been identified. Although we have some certification, the teachers many times can't fluently read Braille and can't write. And if they can't read and can't write, even though they have met some certification standards, technically, we have to improve the competency.

There have been a number of State laws that are similar to what I am attempting to do. They're cost-effective. They do not cost an awful lot of money. But it works on the standards for teachers and it works in different ways to, in fact, present programs similar to the amendment that I offered before the education program, and I believe that they will work.

So, specifically, now I am working with the respective blind organizations trying to fashion language that would be acceptable to them and would meet those goals and would, in fact, then be what I hope to be acceptable to you.

In essence, it deals with the skills assessments of those students and what needs are presented by the visually impaired. It establishes those teacher competency requirements to insure that, even though we have this technical level of certification, that we have an accompanying competency level to, in fact, perform the goals.

It facilitates production of Braille materials through digital text. That's very important because with digital text you can print Braille materials much more cheaply and cost-effectively. What you have right now is you have somebody sit down and word by word transpose these things. And this has turned out to be very effective and cost-effective as well.

Of the 25 States with Braille literacy laws, all have done so, as this bill will do, with minimal cost. And I think that's very important.

So with that, I am asking that—I do not have a specific legislative vehicle here today that I am testifying about. I have come here today to let the committee know that the amendment that I had offered to the education bill that I pulled is now being pulled and tugged at by the respective blind communities at the request of the Chairman, and I think it was good advice.

Once that language has been agreed upon on a consensus basis which encompasses the goals of my initiative, then I will resubmit that language. But it is, in general, that language to a greater degree that we are familiar with with those changes.

So I thank Chairman Rose. I am available for any questions you have and look forward to working with you.

[The prepared statement of Hon. James A. Traficant, Jr., follows:]

JAMES A. TRAFICANT, JR.
17TH DISTRICT, OHIO

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STATEMENT OF THE HONORABLE
JAMES A. TRAFICANT, JR.
SUBCOMMITTEE ON SELECT EDUCATION AND CIVIL RIGHTS
APRIL 14, 1994

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify on the reauthorization of the Individuals with Disabilities Education Act (IDEA). I would like to speak today about the decreasing literacy rate among the visually impaired and to offer my "Braille Literacy Amendment" as a starting point for improving our current policy under IDEA.

According to Goal Five of the recently enacted "Goals 2000: Educate America Act:" 'By the year 2000, every American will be literate.' Yet, nearly half of all blind elementary and secondary level students cannot read Braille or print.

In fact, the numbers of the blind who can read at all are declining. In 1968, out of 19,902 blind students enrolled in elementary and secondary education, 40 percent read Braille, 45 percent read large type or regular print, and 4 percent read both. In January, 1993, out of 50,204 blind students, fewer than 9 percent could read Braille, 27 percent could read print, and 40 percent could not read at all. In other words, while there are 40,000 more blind children in school today, only 30 percent can read -- a far cry from 95 percent in 1968. These figures reflect the shocking magnitude of the literacy crisis among the visually impaired in our nation today.

Basic literacy skills are a fundamental part of education. Undoubtedly, impaired vision can have a profound impact on reading and writing skills. Therefore, the selection of instructional materials and methodology such as Braille, large print, auditory instruction, or combinations thereof is a key decision in improving the literacy rate among the blind.

Language designed to increase literacy among the visually impaired through the use and combinations of instructional materials has been enacted in 25 states. These state laws, as written, generally require blind students to receive a Braille literacy skills assessment to determine whether a student's visual impairment affects his or her ability to read and write proficiently. The proficiency standard, identical for the visually impaired and their sighted counterparts, is based on the student's ability and grade level.

THIS STATIONERY PRINTED ON PAPER MADE OF RECYCLED FIBERS

At this time, I would like to submit the Traficant "Braille Literacy Amendment" to be printed in the record. The "Braille Literacy Amendment" which I had intended to offer under H.R. 6, the "Improving America's Schools Act" is in essence, the same language enacted in 25 states. The Traficant amendment would have extended this language to all 50 states, requiring all states to develop a literacy plan for the blind and to manage existing funding to match those needs.

During consideration of H.R. 6, the "Improving America's Schools Act," several representative organizations of the blind community, as well as the committee itself, had objections to certain provisions and definitions in the amendment. As a result, I respectfully withdrew my amendment from consideration under H.R. 6.

The issue of the declining rate of literacy among the visually impaired was first brought to my attention by the National Federal of the Blind. My intent, however, was and still is to serve the entire blind community. My intent is to ensure that every American, regardless of race, religion, economic background or physical disability, is literate or is given every opportunity to perform to the best of his or her ability.

Representative organizations of blind community and I are currently in the process of negotiating and working together to reach a consensus on language that everyone, including the committee, can agree upon. The Traficant amendment is the foundation from which a consensus will be derived. With the support of the blind community, I stand ready to submit the consensus agreement to the committee once it has been finalized.

The basic provisions of the Traficant amendment, which in principle will be maintained in the consensus agreement are as follows:

The first section calls for an individual assessment of each student's literacy skills. Based on the assessment, each student would then receive an appropriate level of instruction of Braille to ensure the student is able to read and write on the same level as their sighted counterparts.

Under the current system, if a visually impaired student has some visual acuity, he or she is taught to read standard print. This is appropriate for most children, but there are some with progressive eye conditions who will lose sight as time goes on. As the print shrinks, as the white space and pictures disappear, and as the assignments lengthen, the student finds it more and more difficult to accomplish the simple task of reading, let alone the more complex task of learning the material. Without fundamental Braille instruction in the early grades, the student is forced to learn it years later when it is more difficult, falling further and further behind his peers. The amendment instructs parents and teachers to take steps to insure that literacy will be retained by the child into adulthood, regardless of the medium used to achieve this goal, and instructs the teaching of an alternative medium if print will not meet this standard. Braille instruction, based on an assessment of a student's literacy skills and physical disability, is necessary component in any literacy program for the blind.

The second section establishes teacher competency standards for Braille instruction and specialized training for special and general education teachers.

Under the current system, an applicant for teacher certification to teach the visually impaired may have attended a college or university which passes students without making them demonstrate competence in reading and writing Braille. Under the "Improving America's Schools Act" we required all general education teachers to be masters in any subject area that they teach. Braille instructors should be held to the same standard by demonstrating competency in reading and writing Braille.

The third section facilitates production of Braille and digital texts and materials at essentially no cost to education agencies or textbook publishers. The digital format would give local education agencies ready access and reproduction of Braille and printed text with very little time and expense.

Until about five years ago, the only way to produce a Braille book was for someone to sit down with a printed copy of the book and copy it into Braille with a Braille writer, one letter at a time. With a digitized version of the book, books can be produced by computers as easily as it could be printed. Digital text requirements would make most textbooks readily available in Braille at a minimal cost. The development of a national disk depository from which states could borrow could greatly defray costs as well.

Finally, the Traficant amendment does not authorize new funding. The amendment requires schools for the blind to develop a literacy plan. By developing a plan, evaluating the reading level of the students, and obtaining digital texts for cost-effective reproduction, schools will be better able to manage existing funding to meet the needs of the students. Of the 25 states that have already established a similar program, all have done so with minimal or no additional cost. Schools for the blind currently receive a direct federal appropriation for literacy programs under IDEA. This appropriation has been in existence since 1879. The 1994 appropriation for IDEA was $6.5 million.

Once again, I thank you, Mr. Chairman, and Members of the Committee for the opportunity to testify. I am willing and ready to work with you, Mr. Chairman, the Members of the Committee, on this timely issue. I would be more than happy to address any concerns or questions that you or Members of the Committee may have at this time.

As of April 1, 1994, twenty-five states have enacted specific legislation to promote Braille literacy. Most of these laws are patterned after the Blind Persons Literacy Rights and Education Act. Because of particular characteristics within certain states, however, some provisions have been modified or deleted to suit unique circumstances. For example, textbooks in many states are selected by individual school districts, so the mandate in a state law for diskette versions has not fit well with the existing purchasing arrangements. The following states have enacted specific Braille literacy laws:

1. Arizona, July 1, 1991
2. Illinois, September 14, 1992
3. Kansas, April 2, 1991
4. Kentucky, April 14, 1992
5. Louisiana, 1988; amended 1992
6. Maine, June 17, 1991
7. Maryland, April 2, 1992
8. Minnesota, April 29, 1992
9. Missouri, 1990
10. South Carolina, May 20, 1992
11. South Dakota, February 13, 1991
12. Texas, September 1, 1991
13. Wisconsin, April 13, 1992
14. Virginia, 1990
15. Idaho, April, 1993
16. Florida, April, 1993
17. Indiana, April, 1993
18. Iowa, April, 1993
19. Oregon, July, 1993
20. Rhode Island, July, 1993
21. New Mexico, May, 1993
22. Utah, November, 1993
23. New Mexico, June, 1993
24. Ohio, February, 1994
25. Georgia, March, 1994

AMENDMENT TO H.R. 6, AS REPORTED
OFFERED BY MR. TRAFICANT OF OHIO

Page 829, after line 11, insert the following:

SEC. 310. DEFINITIONS.

Section 602 of the Individuals with Disabilities Education Act is amended by adding at the end the following:

"(28) The term "blind or visually impaired student" means an individual who—

"(1) has a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees;

"(2) has a medically indicated expectation of visual deterioration; or

"(3) has a medically diagnosed limitation in visual functioning that restricts the student's ability to read and write standard print at levels expected of other students of comparable ability and grade level.

"(29) The term "Braille Literacy Plan" means the components of an Individualized Education Plan (IEP) for a child who is blind or visually impaired which, through braille instruction and use, are designed to enable the child to communicate effectively. The plan shall—

"(1) be based on a presumption that effective communication commensurate with ability and grade level requires that a child who is blind or visually impaired must be given an assessment for braille and braille instruction and use unless, on an individual basis, the results of such assessment provide clear and convincing evidence that a child's reading and writing performance is not affected by a visual impairment;

"(2) describe the program of braille instruction designed for the child, including the frequency and length of instructional sessions, goals to be achieved, and the objective measures to be used for assessing progress; and

"(3) describe how braille will be implemented as the child's primary mode for learning through integration with other classroom activities.".

Page 837, after line 25, insert the following (and redesignate any subsequent sections accordingly):

SEC. 312. STATE PLANS.

Section 613(a)(11) of the IDEA is amended by inserting " and Braille Literacy Plans" after "programs" the 2d place it appears.

SEC. 313. APPLICATION.

Section 614(a) of the IDEA is amended—

(1) by redesignating paragraphs (6) and (7) as paragraphs (7) and (8), respectively; and

(2) by inserting after paragraph (5) the following:

"(6) provide satisfactory assurances that the local educational agency or intermediate educational unit will—

"(A) establish or revise, whichever is appropriate, a Braille Literacy Plan which shall be incorporated into the Individualized Education Program of each child with a disability who is blind or visually impaired;

"(B) assure that braille instruction under each such plan is provided by personnel who have demonstrated competency in the teaching of braille consistent with standards adopted by the National Library Service for the Blind and Physically Handicapped of the Library of Congress; and

"(C) require that the publisher of any textbook or other educational material obtained with funds provided under the Elementary and Secondary Education Act of 1965 shall furnish along with the ink-print editions at least one digital text version of such textbook or other educational material.".

Page 838 after line 25, insert the following (and redesignate any subsequent sections accordingly):

SEC. 313. GRANTS FOR PERSONNEL TRAINING.

Section 631(a)(1) of the IDEA is amended—

(1) in subparagraph (D), by striking "and post-doctoral levels), and" and inserting "and post-doctoral levels),";

(2) by striking the period at the end of subparagraph (E); and

(3) by adding after subparagraph (E) the following:

"(F) training of special education personnel and other personnel in braille instructional services using standards consistent with the Competency Test for Teachers developed by the National Library Service for the Blind and Physically Handicapped of the Library of Congress.".

As Passed by the Senate*

120th General Assembly

Regular Session

1993-1994

Am. Sub. H. B. No. 164

REPRESENTATIVES GERBERRY-LOGAN-MALLORY-PERZ-PRINGLE-PRENTISS-BOYD-MAIER-BENDER-BEATTY-VERICH-PADGETT-SENATORS SNYDER-KEARNS-SCHAFRATH-CUPP-NEY-WATTS-GAETH

A BILL

To amend sections 3323.01 and 3329.01 and to enact sections 3319.232, 3323.011, 3323.031, and 3323.18 of the Revised Code to require the standards for teaching certificates to teach visually disabled students to include demonstrated competency in the use of braille, to require an annual assessment of reading and writing skills in each medium determined to be appropriate for each visually disabled student, to define "students with visual disabilities" to include those medically predicted to become visually disabled in the future, to require IEP's for visually disabled students to specifically contain a requirement for instruction in braille reading and writing when that medium is appropriate for the student, to require integration of the use of braille reading and writing into a student's entire curriculum when braille is specified as an appropriate medium for the student, to require publishers wishing to

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offer schoolbooks for sale to Ohio schools to also offer for sale computer diskettes for translating the text into braille at a price no greater then the schoolbook price, to permit school districts and nonpublic schools to add time to the normal school day for any number of days to make up days missed for hazardous weather conditions in excess of the number permitted by law, and to declare an emergency.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3323.01 and 3329.01 be amended and sections 3319.232, 3323.011, 3323.031, and 3323.18 of the Revised Code be enacted to read as follows:

Sec. 3319.232. THE STATE BOARD OF EDUCATION SHALL ADOPT STANDARDS FOR ATTAINING A CERTIFICATE OF THE TYPE DESCRIBED IN DIVISION (E) OF SECTION 3319.22 OF THE REVISED CODE THAT REQUIRE ANY TEACHER CERTIFIED TO TEACH STUDENTS WITH VISUAL DISABILITIES TO DEMONSTRATE COMPETENCY IN READING AND WRITING BRAILLE. THE STANDARDS FOR DEMONSTRATING COMPETENCY SHALL BE CONSISTENT WITH THOSE ADOPTED FOR TEACHERS BY THE NATIONAL LIBRARY SERVICE FOR THE BLIND AND PHYSICALLY HANDICAPPED OF THE LIBRARY OF CONGRESS.

Sec. 3323.01. As used in this chapter and Chapter 3321. of the Revised Code:

(A) "Handicapped child" means a person under twenty-two years of age who is developmentally handicapped, hearing handicapped, speech handicapped, visually handicapped DISABLED, severe behavior handicapped, orthopedically handicapped, multihandicapped, other health handicapped, specific learning disabled, autistic, or traumatic brain injured, and by reason thereof requires special education.

(B) "Special education program" means the required related services and instruction specifically designed to meet the unique needs of a handicapped child, including classroom instruction, home instruction, and instruction in hospitals and institutions

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and in other settings.

(C) "Related services" means transportation, and such developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education, including the early identification and assessment of handicapped conditions in children, speech pathology and audiology, psychological services, occupational and physical therapy, physical education, recreation, counseling services including rehabilitative counseling, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only.

(b) "Appropriate public education" means special education and related services that:

(1) Are provided at public expense and under public supervision;

(2) Meet the standards of the state board of education;

(3) Include an appropriate preschool, elementary, or secondary education;

(4) Are provided in conformity with the individualized education program required under this chapter.

(c) "Individualized education program" means a written statement for each handicapped child designed to meet the unique needs of a handicapped child, which statement shall include:

(1) A statement of the present levels of educational performance of such child;

(2) A statement of annual goals, including short-term instructional objectives;

(3) A statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs;

(4) A statement of the transition services needed for such child beginning no later than age sixteen and annually thereafter (and, when determined appropriate for such child, beginning at age fourteen or younger), including, when appropriate, a statement of the interagency responsibilities and linkages before (13)

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the student leaves the school setting;

(5) The projected date for initiation and anticipated 4.23
duration of such services; 4.24

(6) Appropriate objective criteria and evaluation 4.26
procedures and schedules for determining, on at least an annual 4.27
basis, whether instructional objectives are being achieved, and 4.28
whether current placement is appropriate. 4.29

(F) "Other educational agency" means a department, division, bureau, office, institution, board, commission, committee, authority, or other state or local agency, other than a school district or an agency administered by the department of mental retardation and developmental disabilities, that provides or seeks to provide special education or related services to handicapped children.

(G) "School district" means a city, local, or exempted village school district.

(H) "Parents" means either parent. If the parents are separated or divorced, "parent" means the parent who is the residential parent and legal custodian of the handicapped child. Except as used in division (I) of this section and in sections 3323.09 and 3323.141 of the Revised Code, "parents" includes a child's guardian or custodian. This definition does not apply to Chapter 3321. of the Revised Code.

(I) As used in sections 3323.09, 3323.091, 3323.13, and 3323.14 of the Revised Code, "school district of residence" means:

(1) The school district in which the child's parents reside;

(2) If the school district specified in division (I)(1) of this section cannot be determined, the last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown;

(3) If the school district specified in division (I)(2) of this section cannot be determined, the school district determined by the court under section 2151.357 of the Revised Code, or if no

district has been so determined, the school district as determined by the probate court of the county in which the child resides. The school district of residence that had been established under this section on December 12, 1983, shall remain the child's school district of residence unless a district of residence can be determined under division (I)(1) or (2) of this section.

(4) Notwithstanding divisions (I)(1) to (3) of this section, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child's school district of residence.

(J) "County MR/DD board" means a county board of mental retardation and developmental disabilities.

(K) "Handicapped preschool child" means a handicapped child who is at least three years of age but is not of compulsory school age, as defined under section 3321.01 of the Revised Code, and who has not entered kindergarten.

(L) "Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that:

(1) Promotes movement from school to post-school activities, including post-secondary education; vocational training; integrated employment, including supported employment; continuing and adult education; adult services; independent living; and community participation;

(2) Is based upon the individual student's needs, including taking into account the student's preferences and interests;

(3) Includes instruction, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(M) "VISUAL DISABILITY" FOR ANY INDIVIDUAL MEANS THAT ONE OF THE FOLLOWING APPLIES TO THE INDIVIDUAL:

(1) THE INDIVIDUAL HAS A VISUAL ACUITY OF 20/200 OR LESS IN THE BETTER EYE [illegible]

IN THE BETTER EYE WITH CORRECTING LENSES OR HAS A LIMITED FIELD OF VISION IN THE BETTER EYE SUCH THAT THE WIDEST DIAMETER SUBTENDS AN ANGULAR DISTANCE OF NO GREATER THAN TWENTY DEGREES.

(2) THE INDIVIDUAL HAS A MEDICALLY INDICATED EXPECTATION OF MEETING THE REQUIREMENTS OF DIVISION (M)(1) OF THIS SECTION OVER A PERIOD OF TIME.

(3) THE INDIVIDUAL HAS A MEDICALLY DIAGNOSED AND MEDICALLY UNCORRECTABLE LIMITATION IN VISUAL FUNCTIONING THAT ADVERSELY AFFECTS THE INDIVIDUAL'S ABILITY TO READ AND WRITE STANDARD PRINT AT LEVELS EXPECTED OF THE INDIVIDUAL'S PEERS OF COMPARABLE ABILITY AND GRADE LEVEL.

(N) "STUDENT WITH A VISUAL DISABILITY" MEANS ANY PERSON UNDER TWENTY-TWO YEARS OF AGE WHO HAS A VISUAL DISABILITY.

(O) "INSTRUCTION IN BRAILLE READING AND WRITING" MEANS THE TEACHING OF THE SYSTEM OF READING AND WRITING THROUGH TOUCH COMMONLY KNOWN AS STANDARD ENGLISH BRAILLE.

SEC. 3323.011. (A) THE INDIVIDUALIZED EDUCATION PROGRAM REQUIRED FOR ANY STUDENT WITH A VISUAL DISABILITY UNDER THIS CHAPTER SHALL INCLUDE THE FOLLOWING, IN ADDITION TO THE STATEMENTS REQUIRED PURSUANT TO DIVISION (E) OF SECTION 3323.01 OF THE REVISED CODE:

(1) A STATEMENT THAT INSTRUCTION IN BRAILLE READING AND WRITING WAS CAREFULLY CONSIDERED FOR THE STUDENT AND THAT PERTINENT LITERATURE DESCRIBING THE EDUCATIONAL BENEFITS OF INSTRUCTION IN BRAILLE READING AND WRITING WAS REVIEWED BY THE PERSONS DEVELOPING THE STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM;

(2) A STATEMENT SPECIFYING THE ONE OR MORE READING AND WRITING MEDIA IN WHICH INSTRUCTION IS APPROPRIATE FOR THE STUDENT'S EDUCATIONAL NEEDS;

(3) IF INSTRUCTION IN BRAILLE READING AND WRITING IS SPECIFIED AS APPROPRIATE FOR THE STUDENT PURSUANT TO DIVISION (A)(2) OF THIS SECTION, A STATEMENT OF THE INSTRUCTION IN BRAILLE READING AND WRITING THAT IS TO BE PROVIDED TO THE STUDENT. THIS

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STATEMENT SHALL SPECIFY THE DATE ON WHICH THE INSTRUCTION IS TO COMMENCE, THE FREQUENCY AND DURATION OF INSTRUCTION SESSIONS, THE LEVEL OF COMPETENCY IN BRAILLE READING AND WRITING EXPECTED TO BE ACHIEVED ANNUALLY, AND THE OBJECTIVE ASSESSMENT MEASURES TO BE USED. WHENEVER APPROPRIATE, THE EXPECTED LEVEL OF BRAILLE COMPETENCY FOR THE STUDENT SHALL BE TO ENABLE THE STUDENT TO COMMUNICATE EFFECTIVELY AND EFFICIENTLY WITH THE SAME LEVEL OF

PROFICIENCY EXPECTED OF THE STUDENT'S PEERS OF COMPARABLE ABILITY AND GRADE LEVEL AND THE INSTRUCTION IN BRAILLE READING AND WRITING THAT IS TO BE PROVIDED SHALL BE DESIGNED ACCORDINGLY.

(B) IF THE INDIVIDUALIZED EDUCATION PROGRAM FOR ANY STUDENT WITH A VISUAL DISABILITY DOES NOT SPECIFY INSTRUCTION IN BRAILLE READING AND WRITING AS APPROPRIATE FOR THE STUDENT PURSUANT TO DIVISION (A)(3) OF THIS SECTION, EACH ANNUAL REVIEW OF THAT STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM, AS PROVIDED PURSUANT TO DIVISION (C) OF SECTION 3323.08 OF THE REVISED CODE, SHALL INCLUDE A WRITTEN STATEMENT SPECIFYING THE REASONS WHY INSTRUCTION IN BRAILLE READING AND WRITING IS NOT APPROPRIATE FOR THE STUDENT.

(C)(1) NO STUDENT WITH A VISUAL DISABILITY SHALL BE DENIED INSTRUCTION IN BRAILLE READING AND WRITING PURSUANT TO THIS SECTION SOLELY BECAUSE THE STUDENT HAS SOME REMAINING VISION OR BECAUSE THE STUDENT IS TO RECEIVE READING AND WRITING INSTRUCTION IN ANOTHER MEDIUM.

(2) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE EXCLUSIVE USE OF INSTRUCTION THROUGH THE MEDIUM OF BRAILLE READING AND WRITING IF OTHER READING AND WRITING MEDIA ARE APPROPRIATE TO A STUDENT'S EDUCATIONAL NEEDS.

(D) ANY INSTRUCTION IN BRAILLE READING AND WRITING PROVIDED TO ANY STUDENT WITH A VISUAL DISABILITY PURSUANT TO DIVISION (A)(3) OF THIS SECTION SHALL BE PROVIDED BY A TEACHER CERTIFIED TO TEACH STUDENTS WITH VISUAL DISABILITIES.

Sec. 3323.031. THE BOARD OF EDUCATION OF EACH SCHOOL DISTRICT SHALL ANNUALLY ASSESS THE READING AND WRITING SKILLS OF EACH STUDENT WITH A VISUAL DISABILITY ENROLLED IN THE DISTRICT IN EACH MEDIUM IN WHICH [illegible]

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[illegible] IN WHICH INSTRUCTION IS SPECIFIED AS APPROPRIATE FOR THE STUDENT PURSUANT TO DIVISION (A)(2) OF SECTION 3323.011 OF THE REVISED CODE. THE RESULTS OF EACH ASSESSMENT SHALL BE PROVIDED IN A WRITTEN STATEMENT THAT SPECIFIES THE STUDENT'S STRENGTHS AND WEAKNESSES IN EACH MEDIUM ASSESSED.

SEC. 3323.18. IF ANY SPECIAL EDUCATION PROGRAM PROVIDED PURSUANT TO THIS CHAPTER OR CHAPTER 3325. OF THE REVISED CODE

SERVES A STUDENT WITH A VISUAL DISABILITY FOR WHOM INSTRUCTION IN BRAILLE READING AND WRITING IS SPECIFIED AS APPROPRIATE PURSUANT TO DIVISION (A)(2) OF SECTION 3323.011 OF THE REVISED CODE. THE ENTITY PROVIDING THE PROGRAM SHALL INTEGRATE THE USE OF BRAILLE READING AND WRITING INTO THE STUDENT'S ENTIRE CURRICULUM AND OTHER CLASSROOM ACTIVITIES IN SUCH A MANNER THAT BRAILLE READING AND WRITING BECOMES AN EFFECTIVE LEARNING TOOL FOR THE STUDENT.

Sec. 3329.01. Any publisher of schoolbooks in the United States desiring to offer schoolbooks for use by pupils in the public schools of Ohio, before such books may be adopted and purchased by any school board, must, on or before the first day of January of each year, file in the office of the superintendent of public instruction, the published list wholesale price thereof. When any such publisher desires to offer for use a schoolbook after the first day of January, a supplement to the January list must be filed in the office of the superintendent of public instruction, showing the published list wholesale price thereof. No revised edition of any such book shall be used in public schools until the published list wholesale price thereof has been filed in the office of the superintendent. NO PUBLISHER SHALL FILE THE WHOLESALE PRICE OF ANY SCHOOLBOOK UNLESS THE PUBLISHER COMPLIES WITH BOTH OF THE FOLLOWING:

(A) AT THE SAME TIME AS FILING THE WHOLESALE PRICE OF THE SCHOOLBOOK, THE PUBLISHER ALSO FILES THE WHOLESALE PRICE OF A COMPUTER DISKETTE THAT CONTAINS THE TEXT OF THE SCHOOLBOOK IN THE AMERICAN STANDARD CODE FOR INFORMATION INTERCHANGE OR IN ANOTHER COMPUTER LANGUAGE APPROVED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR TRANSLATING THE TEXT OF THE SCHOOLBOOK INTO

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BRAILLE.

(B) THE WHOLESALE PRICE FILED FOR ANY SPECIFIED NUMBER OF COMPUTER DISKETTES FOR THE SCHOOLBOOK DOES NOT EXCEED THE WHOLESALE PRICE FILED FOR THE SAME NUMBER OF THE PRINTED VERSION OF THAT SCHOOLBOOK.

Section 2. That existing sections 3323.01 and 3329.01 of the Revised Code are hereby repealed.

Section 3. Within ninety days after the effective date of this act, the State Board of Education shall adopt the standards required by section 3319.232 of the Revised Code. These standards shall take effect at the time specified in section 3319.23 of the Revised Code.

Section 4. (A) As used in this section, "length of the normal school day" means the average number of clock hours with pupils in attendance that a school day normally consisted of throughout the 1993-1994 school year prior to January 1, 1994.

(B) In order to make up days pursuant to division (C) of this section, a board of education or governing authority operating a school subject to the state minimum standards shall, not later than June 30, 1994, report to the Department of Education the length of the normal school day for each grade level and the length and number of extended school days for each grade level.

(C) A school district or nonpublic school shall not be considered to have failed to comply with division (B) of section 3317.01 of the Revised Code during school year 1993-1994 because a school was closed due to hazardous weather conditions for a number of days exceeding the number permitted under that section if, during school year 1993-1994, the length of the normal school day for that school was extended for the number of days necessary to make up all such excess days.

(D) For each day "made up" under division (C) of this section, the length of the normal school days must be extended such that pupils in grades one through six are in attendance for a total of five additional hours and pupils in grades seven

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through twelve are in attendance for a total of five and one-half additional hours.

Section 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity lies in the fact that immediate action is necessary to provide an alternative way in which school districts and nonpublic schools can make up days missed for hazardous weather conditions in excess of the number permitted by law. Therefore, this act shall go into immediate effect.

COLORADO CENTER CCB FOR THE BLIND

2232 South Broadway • Denver, Colorado 80210 • (303) 778-1130

March 1, 1994

Mrs. Peggy Elliott
814 4th Avenue, Suite 200
Grinnell, Iowa 50112

Dear Mrs. Elliott,

It has been brought to my attention that questions have been raised with regard to the cost of implementing legislation aimed at increasing Braille literacy among blind and low vision children. Colorado currently has a Braille literacy bill under consideration by the Colorado General Assembly. This legislation has passed through the House of Representatives and awaits consideration by the Senate. The General Assembly has placed no fiscal note on this legislation. This means that there is no anticipated fiscal impact.

In my capacity as Chairman of the Board of the Colorado School for the Deaf and Blind, I have explored the issue of cost. Braille literacy as contemplated in our state legislation as well as in federal legislation requires a reorganization of assessment and instructional approaches; however, it can be done with the same resources. We believe that our state general assembly is correct in attaching no fiscal note to the Braille literacy bill.

Sincerely,

Homer Page

Homer Page, Ph.D.,
President, National Federation of the Blind of Colorado
Chairman, Colorado School for the Deaf and Blind

Jerry Whittle, President
Louisiana Chapter
Association for the Education and
Rehabilitation of the Blind and Visually
Impaired
22 University Boulevard
Ruston, Louisiana 71270
(318) 251-2891

February 28, 1994

To Whom It May Concern:

As President of the Louisiana Chapter of the Association for the Education and Rehabilitation of the Blind and Visually Impaired (AER), I represent vision teachers, administrators in rehabilitative services for the blind and visually impaired, rehabilitation counselors, and other professional service providers. One of our greatest concerns is the education of blind and visually impaired children in our state and in our nation. Over the years, blind and visually impaired children have not been afforded the quality of Braille instruction they needed to compete with their sighted peers. Because of this lack of quality instruction and because Braille is now more accessible than ever in our history, AER and other groups worked very hard to pass a model Braille law in Louisiana in 1988 which mandates that blind and visually impaired children will be provided with Braille instructors and with Braille textbooks. The passage of this law in Louisiana has not appreciably resulted in more expenses for either Braille teachers or for Braille materials; however, the passage of our Braille law has brought a heightened awareness of just how vital Braille is to the education of most blind and visually impaired children in our state.

All across America, special funds are available for hiring qualified Braille teachers and to purchase Braille textbooks. Moreover, transcribing units are organized all over America to produce print books in Braille. We simply need a heightened national awareness of just how important quality Braille instruction is to the future of blind and visually impaired children all over this country. Currently, an amendment has been added to HR 6 which will bring a greater focus on the importance of Braille instruction for blind and visually impaired children all over America--a national Braille literacy amendment. We in the Louisiana Chapter of the AER would like to strongly urge every congressman and senator to vote for this most important amendment to help promote literacy among the blind and visually impaired youth of America and afford them the opportunity to compete on terms of equality with their sighted peers. The increase in cost will be minimal, and you as legislators will help to ensure a brighter future for thousands of deserving and often overlooked youngsters.

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On behalf of the AER in Louisiana, we would greatly appreciate your support to the national Braille amendment to HR 6 which will be introduced in the very near future.

Sincerely,

Jerry Whittle

Jerry Whittle, President,
Louisiana Chapter
Association for the Education and
Rehabilitation of the Blind and Visually
Impaired

Joanne Wilson, Chairperson
Advisory Council
Louisiana Rehabilitation Services
2509 Foxxcreek Drive
Ruston, Louisiana 71270

February 28, 1994

To Whom It May Concern:

As chairperson of the advisory council of the Louisiana Rehabilitation Services, the state-supported agency which provides rehabilitative and educational services to both blind and visually impaired adults and children, I would like to request that you strongly support the national Braille literacy amendment to HR 6 which will soon be before the House of Representatives for adoption.

We urgently need a uniform set of standards for our nation's blind and visually impaired youth. The national Braille literacy amendment will help to strengthen the quality of teaching and the availability of Braille textbooks for blind and visually impaired children. Furthermore, the amendment will help to ensure that more blind and visually impaired children will receive quality Braille instruction and will be provided with the learning materials they need to improve their chances for a more productive future. In 1988, several different agencies serving the blind worked together to pass a strong Braille law similar to the amendment to HR 6, and our model Braille law has made it possible for our blind and visually impaired children to receive improved instruction and greater access to Braille learning materials with no appreciable increase in the state budget for such funding. Our Braille law in Louisiana has been a great blessing to many deserving and under-served blind and visually impaired children at a minimal cost to our state.

As chairperson of the Louisiana Rehabilitation Services Advisory Council, I believe that I speak for the other members of our council and for the hundreds of service providers in our state's rehabilitation department in strongly requesting your support of the national Braille literacy amendment to HR 6. Our blind and visually impaired children from all over the nation deserve the opportunity to have a quality education, and this amendment will be an integral part of maintaining and ensuring quality Braille instruction as it has never been provided before. Most importantly, this improved Braille instruction can be provided with very little increase in any state's budget for such an education.

Thank you for your support of the amendment. We know that all of you will want to be a part of improving the education of our blind and visually impaired youth.

Sincerely,

Joanne Wilson, Chairperson
Advisory Council
Louisiana Rehabilitation Services

MINNESOTA STATE RESIDENTIAL ACADEMIES
Minnesota State Academy for the Blind   Minnesota State Academy for the Deaf
615 Olof Hanson Drive • P.O. Box [illegible] • Faribault, MN 55021
(507) 332-5400 (V/TTY) • [illegible] 332-5404 (FAX)
Wade M. Karli
Administrator

February 28, 1994

To Whom It May Concern:

The State of Minnesota was one of the first states to enact braille literacy legislation. We were, and are, proud of this accomplishment. The legislation has served to refocus educators on this all important matter of literacy.

The law has drawn Minnesota's professionals together to address the issue of braille instruction and assessment and has served to make parents knowledgeable about literacy issues, and to make the instruction of braille a matter of discussion at IEP meetings. It has been a good law, serving Minnesota's youth. The legislation has put literacy on the forefront of instruction for students who are blind, which was the intent of the legislation.

To the best of my knowledge there has been no downside to this legislation. Funding has not been an issue. The law is doing what was intended - to serve children and youth who are blind.

I would ask that you support all efforts for federal legislation on this matter.

Sincerely,

Wade M. Karli
Wade M. Karli (AU)
Administrator

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SOUTH CAROLINA SCHOOL
FOR THE DEAF AND THE BLIND

Joseph P. Finnegan, Jr.
President

Board of
Commissioners

Norman F. Pulliam
Chairman
4th Congressional District

Donald Capps
Vice Chairman
Member at Large, Blind

Linda K. Silver
Secretary
First Congressional District

F. Ashton Carroll III
2nd Congressional District

Carl F. Mathis Ph.D.
Third Congressional District

Wallace B. Dalton
Fifth Congressional District

E. Stanley Baldwin
Sixth Congressional District

Harry Clements
Member at Large, Deaf

Cody S. Holland
Member at Large

Ex Officio Members

Barbara S. Nielsen, Ed.D.
State Superintendent
of Education

Douglas E. Bryant
Commissioner, DHEC

Janice Trawick
Representative from the
Governor's Office

MEMORANDUM

TO: Peggy Pinder Elliot

F.OM: Joseph F. Finnegan, Jr. JFF

RE: Braille Literacy (HR 6)

DATE: February 28, 1994

Please accept this statement regarding the financial impact the Braille Literacy Bill has had in South Carolina. To the best of my knowledge, this recently (two years ago) adopted state legislation has not had a negative financial impact in this state. I certainly encourage Congress to approve HR 6 and part of IDEA.

JFF,Jr.:fb

355 Cedar Springs Road • Spartanburg, South Carolina 29302-4699
Telephone (803) 585-7711 • Fax (803) 585-3555

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NEW MEXICO COMMISSION FOR THE BLIND
PERA Building, Room 553
Santa Fe, New Mexico 87503
(505) 827-4479

BRUCE KING
Governor

ARTHUR SCHREIBER, Chairman
GILBERT MARTINEZ, Commissioner
GEETHA PAI, Commissioner

FREDRIC K. SCHROEDER
Executive Director

February 28, 1994

Mr. Marc Maurer, President
National Federation of the Blind
1800 Johnson Street
Baltimore, MD 21230

Dear President Maurer:

I was very pleased to learn of the amendment being contemplated to the Elementary and Secondary Act concerning braille literacy. As you know, in 1993 New Mexico adopted braille literacy legislation. This legislation ensures blind children will have the opportunity to receive competent instruction in braille reading and writing.

Additionally, the legislation mandates text book publishers make available material in electronic media suitable for computer translation into braille. This has been an important provision in terms of cost savings to local education agencies. Current federal law requires materials to be made available to blind children in alternate media. Prior to New Mexico's braille literacy legislation, the process of producing braille materials was costly and time consuming. This created a terrible hardship particularly on small rural districts wishing to produce braille materials. By requiring electronic media directly from text book publishers, even very small districts are able to quickly and inexpensively provide braille materials for blind students. National legislation affirming the right of blind children to become literate, and providing a mechanism to ensure availability of needed materials, would be tremendously beneficial. Rather than accelerating cost, this approach creates an efficient means of making available braille text books in a timely manner. In New Mexico we have found that braille literacy legislation increased effective and efficient service delivery without added cost.

If I can provide additional information, please feel free to contact me.

Sincerely yours,

Fred Schroeder
Fredric K. Schroeder
Executive Director

FKS/emb

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FLORIDA DEPARTMENT OF EDUCATION
Doug Jamerson
Commissioner of Education

Whit Springfield, Director
Division of Blind Services

February 28, 1994

Peggy Pinder
National Federation of the Blind
1800 Johnson Street
Baltimore, Maryland

Dear Ms. Pinder:

In your quest to secure passage of Proposition Six (6) in the national Congress, please know that to my knowledge no extraordinary financial burden has been placed on the State of Florida as a result of its passage of the Braille Literacy Bill last year.

Braille Literacy for people who are blind is of paramount importance. Each and every state, as well as the Federal government, should act to insure that all blind children and adults are afforded the opportunity to acquire appropriate reading and writing skills.

If we can be of assistance in this endeavor, please feel free to call on me.

Thank you.

Sincerely,

Whit Springfield, Director
Florida Division of Blind Services

WS/mh

2540 Executive Center Circle West • Suite 203 Douglas Building • (904) 488-1330

TO: Peggy Elliot
DEPT:
FAX #: (515) 236-8666
FROM: G. Kickul
PHONE:
CO: SBVI
FAX #:
NO. OF PAGES 1
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GREAT FACES. GREAT PLACES.

DEPARTMENT OF HUMAN SERVICES
DIVISION OF SERVICE TO THE BLIND & VISUALLY IMPAIRED
East Highway 34
% 500 East Capitol
Pierre, South Dakota 57501-5070
Phone: (605) 773-4644
FAX: (605) 773-548. TDD: (605) 773-4544

Mr. James Gashel
National Federation of the Blind
1800 Johnson St.
Baltimore, MD 21230

February 28, 1994

Dear Mr. Gashel;

I understand that Congressman James Traficant of Ohio has introduced an amendment to HB 6, the education act which would mandate that all legally blind school children be offered the opportunity to learn braille. Similar legislation is in place in South Dakota and has not had a negative financial impact.

As State Director of a vocational rehabilitation agency for the blind, I feel this amendment is a positive step in offering equal opportunity for blind students in our society.

Sincerely,

Grady Kickul

Grady Kickul, Director

NORMA PAULUS
State Superintendent
of Public Instruction

NEIL KLIEWER
Director

OREGON DEPARTMENT OF EDUCATION
SCHOOL FOR THE BLIND
700 CHURCH STREET SE, SALEM, OREGON 97301-3795
PHONE (503) 378-3820 FAX (503) 373-7537

February 28, 1994

Dear Congressman Trafficant:

It has come to my attention that you have sponsored a Braille Literacy amendment to the IDEA. The National Federation of the Blind of Oregon brought a similar bill to our state legislature last spring. This bill was supported by the Oregon Department of Education, the Commission for the Blind, the Oregon Textbook and Media Center, the School for the Blind, and several consumer organizations.

The Department of Education projected no fiscal impact as a result of the implementation of our Braille Literacy Bill. In fact, the Textbook and Media Center projects a cost savings due to the efficiency of computer generated Braille text books.

Sincerely,

Neil Kliewer

Neil Kliewer,
Director

EDUCATION FIRST!

MEL CARNAHAN
GOVERNOR

MISSOURI
DEPARTMENT OF SOCIAL SERVICES
DIVISION OF FAMILY SERVICES
P.O. BOX 88
JEFFERSON CITY
65103
TDD: 1-800-735-2966, VOICE: 1-800-735-2466

February 28, 1994

The Honorable James A. Traficant, Jr.
U. S. House of Representatives
Washington, D.C. 20515

Dear Congressman:

I am writing in regard to H.R. 6, the 1992 Amendments to the Elementary and Secondary Education Act. In particular, I wish to address the braille literacy amendments which are currently under consideration.

I believe these amendments are important as they communicate clearly to parents and educators the viability of braille for students who are legally blind. Far too frequently we see educators and parents forego the usage of braille, a practice which causes blind and visually impaired students to be ill-equipped in meeting the needs of higher education and employment.

While a braille literacy provision within the Act will better insure that blind and visually impaired students have an opportunity to learn braille, I believe such a provision will not generate significant cost for school systems. Hopefully the braille literacy amendments will result in more blind and visually impaired students taking part in services that the school districts are already mandated to provide.

Sincerely,

Dave Vogel, CRC
Deputy Director, DFS
Rehabilitation Services
for the Blind

DV:kp

"AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER"
services provided on a nondiscriminatory basis

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Major Owens, Chairman
Sub Committee on Select Education and Civil Rights
U.S. House of Representatives
Washington, D.C. 20515

Dear sir,

As a member of the House of Representatives in the State of Maine, I am writing to you to confirm that Maine does have a Braille Literacy Rights Bill. I was pleased to be the sponsor of this bill. There was no added expense in the implementation of this bill. Rather, it allowed for more open discussion of alternatives for blind and visually impaired children. While the bill was not everything that the blind wanted, it was a beginning.

If legislation is developed for a national Braille Literacy Rights Bill, Congress will be taking a monumental step in assuring educational excellence for blind and visually impaired youngsters. I look forward to news of necessary preliminary steps to move the process forward.

Thank you for your time and attention in this matter.

Sincerely,

Dist #26 PORTLAND

James Oliver

Anthony P. Chirico Ed.D.
DIRECTOR

March 4, 1994

TO: Honorable Congressman Major Owens
c/o Peggy Elliott
FAX (515)236-8666

RE: Braille Literacy Bill

Your support of this bill will enhance the learning of many needed handicapped individuals. Please vote for its passage.

Very truly yours,

Anthony P. Chirico
Dr. Anthony P. Chirico
Director of Special Services

APC/jmc

State of Mississippi
DEPARTMENT OF REHABILITATION SERVICES
P.O. Box 22806
1080 River Oaks Plaza Bldg. B., Suite 100
Jackson, MS 39225-2806

FAX (601) 936-0297
Telephone (601) 936-0200
Voice or TDD

Dr. Nell C. Carney, Executive Director

March 8, 1994

The Honorable Major Owens, Chairman
Subcommittee for Select Education and Civil Rights
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Owens:

As the reauthorization of the Individuals with Disabilities Education Act draws near, many of us in the fields of Special Education and Rehabilitation find compelling reasons to advocate for the inclusion of braille literacy initiative.

With the present emphasis on choice and self determination in both Special Education and Rehabilitation, mandatory braille instruction in public school programs takes on an even greater importance than ever before. Braille as an option for children who are blind or visually impaired is essential to the least restrictive environment concept.

As statutory language is offered by the National Federation of the Blind to include braille literacy in the amendments to IDEA, I urge you in the strongest possible terms to support this initiative.

Sincerely,

Nell C. Carney

Nell C. Carney
Executive Director

Post-it® Fax Note 7671

To Peggy Elliott	Date 3-9-94 # of pages 1
Co./Dept.	From Dr. Nell Carney
Phone #	Co. Dept of Rehab Svc.
Fax # 515-236-[illegible]	Phone # 601-853-5100
	Fax #

portunity Employer

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[illegible] State Superintendent of Education

Office of Deputy Superintendent
R. D. Harris

Mississippi School for the Blind
John L. Parrish, Ed.D., Superintendent
(601) 987-3952

March 10, 1994

Hon. Major Owens, Chairman
Select Committee on Education
and Civil Rights
U.S. House of Representatives
Washington, D.C.

RE: Braille Literacy

Dear Congressman Owens:

I am writing in support of the effort by the National Federation of the Blind to have legislation introduced which pertains to the availability of braille instruction for blind children. There is no question in my mind that braille instruction is vital if blind children are to realize their maximum potentials.

Many blind children, particularly those enrolled in local schools programs, are denied the opportunity to learn braille because of the lack of trained teachers. This denial has, over the years, resulted in the creation of a generation of blind individuals who are functionally illiterate when it comes to communicating in written form.

I respectfully request your support of the effort by NFB by which braille literacy will for the first time be the national attention it deserves.

Sincerely,

John L. Parrish, Ed.D.
Superintendent

Mississippi School for the Blind *Mailing address:* 1252 Eastover Drive, Jackson, MS 39211 FAX (601)987-5563

STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES
400 DEADERICK STREET
CITIZENS PLAZA BUILDING
NASHVILLE, TN 37219

March 18, 1994

The Honorable Major Owens
United States House of Representatives
Washington, D.C.

Dear Representative Owens:

I am writing this letter in support of a national braille literacy bill. Such action is desperately needed to insure that blind children in this country continue to receive the high quality education to which every American citizen is entitled.

In recent years, we have seen a dangerous trend in this country in the field of education when it comes to teaching students who are blind. There has been a declining emphasis placed on braille literacy and greater attention paid to high tech solutions such as voice output on computers. Although, technology has its place and has opened many doors of opportunity for blind people all across our country, it is not a substitute for braille.

If a blind child ever expects to achieve a level of independence, he/she must possess effective communication skills. Being able to listen to tape recordings or use a computer with speech is insufficient if the student does not have basic skills in braille. Braille is as fundamental to the blind person as the printed word is to a sighted individual. It plays a role in every aspect of one's life; from education, to work, to recreation, and to activities of daily living.

Several states, including Tennessee, have taken the lead in passing braille literacy bills. These have helped but more needs to be done. A national effort is needed if blind students in every state are to be assured of receiving a meaningful education.

I urge your support of such an effort!

Sincerely,

Terry C. Smith, Director
Services for the Blind

Chairman OWENS. Well, we certainly appreciate the gentleman's concern and hope very much that you can serve as the mediator and negotiator within the family of the blind. We've been caught in the middle in the past and it's not pleasant. They can be pretty persistent.

I have no questions, but I yield to Mr. Ballenger.

Mr. BALLENGER. I have just one question and it concerns the broad definition of vision impaired. Let's put it that way. Personally, I'm blind in this eye and dyslexic in this eye and I think, unless I'm mistaken, I might fit that definition that you all have so far.

Is it possible to get your group to get a pretty close definition, closer definition, than what—I mean seeing impaired is?

Mr. TRAFICANT. Yes, I think that is what Chairman Owens had referred to as some of the pulling and tugging within the community itself. I think it has to be stabilized. Sometimes we split hairs on this business and some people think, well, maybe there is a lot of people that fall under this that really don't need this. They can read. They have some difficulty.

I think what we are really pointing towards is many that have an impairment problem but, as time goes on, it gets worse and worse and then they find themselves not able to read. And that's, more or less, what this is geared to. So that language right there and those concerns that you just brought are specifically language being delineated and set up in writing.

So I think that from the collective advice and experience of the committee, any information you have on that, I mean that is completely open. We just want to make sure that it deals with blind people—we're not just going out there trying to create a program—and that they're satisfied with it, and that people can read, and the people who are teaching the blind can read themselves and can write themselves.

I mean it's almost amazing. We're talking about sighted people. If you had a teacher in school that can't read and can't write, how could they teach? So we're not putting down the certification and the standards of teachers, but we're saying many times they fall into that trap. And maybe it's because maybe we haven't put enough emphasis on making sure that our visually impaired community has the best instruction they could possibly get.

And I think the cost-effectiveness was where we come in so that, Congressman, that is where much of the debate now lies with the community that's debating this.

Mr. BALLENGER. Thank you, Mr. Chairman.

Chairman OWENS. Mr. Scott.

Mr. SCOTT. No questions.

Chairman OWENS. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. Mr. Traficant, I guess my concern goes pretty much to Cass' comment about broadening of the definition, and I'm glad to hear that you say you're willing to take a look at that.

It seems to me that the definition might be so broad that anyone wearing eyeglasses could qualify. That may be an exaggeration, but at least that occurred to me.

Also, maybe is there not a danger that we are establishing a specific curriculum here, and that is, that we're teaching Braille? And would this not perhaps be in violation of some Federal requirements? Is that something we need to look at?

Mr. TRAFICANT. Well, I think we have to look at the intent at this point. And just to say this: We're not trying to do that. We want to make sure that the visually impaired person can read and can understand the world around them just like a sighted person can.

So rather than specific stratification that has its own little industry purposes, no, that's not the intent. And I think that the committee, in looking at that, when they finally see the construct of the language can go ahead and take whatever safeguards they want to take.

That is certainly not the intent. I think it's reasonable to ask that question and I think that has to be addressed in the language as well.

Mr. BARRETT. I think so, too. It occurs to me that we may be mandating that kids, students, be taught by a specific method, Braille. And I wonder if maybe we shouldn't look at that.

Mr. TRAFICANT. Well, let me say this: With the statistics that we have though that I cited out earlier, 40 percent of visually impaired students in 1993 can't read at all. And that's in deference to four percent in 1968.

So we have a real problem and it's growing. And the more sophisticated we get and the more sophisticated the tasks of dealing with our society, the visually impaired have some problems. And maybe what we're doing is maybe we've gone too far the other way. I think there has to be a balance.

Mr. BARRETT. I understand what you're saying and I'm in some sympathy but, again, this is a red flag out there for me, and perhaps for you, as we get further into it.

Mr. TRAFICANT. Well, somewhere between, you know, those who wear eyeglasses needing the services, not needing the services, and those who can't see and can't read any print, we have to find some language. I'm welcoming anything that you do.

I would just like to see us give a bit of helping hand in the IDEA bill. I think that is a good place for it. I agreed when I talked with the Chairman about it and I would just like for you to be open. And if it can be good, fine; if not, you make that decision and I'll try and present the best program we can.

Mr. BARRETT. Thank you, sir. Thank you, Mr. Chairman.

Chairman OWENS. Thank you.

Mr. TRAFICANT. Thank you very much. Thank you, Chairman.

Chairman OWENS. Congressman Rose.

Mr. ROSE. Thank you, Mr. Chairman and members of the subcommittee, for allowing us to testify today. My wife, Joan, and I have come here today to testify about our experiences in going through the special education process with our daughter, Kelly, who is now six years old.

Kelly is a very gifted, highly distractable, severely ADHD, LD little girl. How severe is she? When she entered the Lab School of Washington at age four, she could not sit still in a chair for more than two minutes; she could not wait her turn; she could not operate in a group of three children.

She was totally driven by impulse, but she could tell you about current affairs and anything you wanted to know about an animal or the earth or the environment. She could not follow simple questions or offer a response to them. She could not remember names or answer direct questions. She did not have the mechanisms to put thinking to good use.

But she was outgoing, engaging, and an extremely loving child who wanted more than anything else to learn. And this is our daughter, Kelly, that we dearly love and are very, very proud of.

We first realized that Kelly was having problems at about age three. The director of the House of Representatives Child Care Center, Ms. Natalie Gitelman, asked my wife, Joan, and me to come for a conference. Kelly was getting into fights with other children and not attending at circle time like she should at her age.

On the violence issue, Mr. Ballenger, I agree with what you laid out in your opening statement that that is a problem. Mr. Scott has alluded to it. But God doesn't wrap all his little children in the same cloth when he sends them to earth and they all don't learn the same way.

And what you are going to hear the school board people testifying to, I'm quite sure, is that they don't have enough money to do all these kinds of special things and so they, in the main, believe that they should be all kind of grouped into one place, mainstreamed.

And when they fall out of that, or in the process of falling out of that, is when they can become violent, can become disenchanted with the system because they are not learning. They are frustrated and do, in fact, wind up in criminal situations.

The head of the present adult education system for the State of Washington told me that in all the Federal prisons in the State of Washington, all the people that were in the adult education classes were learning disabled.

And so, you know, I'm saying you all do a good job on rewriting IDEA and maybe we can keep some people out of prison because early on in their educational experiences they didn't get branded as failures or misfits and wound up not meeting the current county commissioners' and school boards' definition of what a normal child is because the commissioners and the school boards simply don't have enough money.

Kelly was taken to the Georgetown University Hospital for testing, where she participated in a battery of tests on three different occasions. The results were: She needed speech and language therapy; she needed to be tested for occupational therapy; she needed behavior modification intervention; and, she is at risk for ADHD, Attention Deficit Hyperactive Disorder.

Later on, it became evident just how severe this was. She was tested in Reston, Virginia, by Dr. Karen Miller, M.D., F.A.A.P., who stated that Kelly was one of the most severely ADHD children that she had ever seen.

Immediately, Kelly began speech and language therapy with Debbie Reagan, who we hired to come to the daycare center to work with her. One of the foremost child psychologists in Washington, Dr. Kendall, began working with us and the child care center to discuss behavior management techniques. She worked with us and Kelly's teachers all summer. The behavior management program worked. Dr. Kendall stressed that Kelly showed delays in fine motor skills and suggested OT evaluation.

December, 1991, Kelly was given a full occupational therapy evaluation at the Lab School of Washington to assess her gross and fine motor capabilities and to determine whether intervention would help. Her scores indicated significant delays in fine motor and, to a lesser extent, gross motor skills. Lab School recommended that Kelly receive regularly scheduled OT twice weekly.

She began therapy in January, 1992, and is still enrolled in regular classes. It's very expensive. We pay for it ourselves. We have the books. It comes out to about $22,000 a year that we have had to come up with to personally pay for this.

While Kelly was at the Child Care Center, we began a team approach to decide the best course of action for her to take. The team consisted of her mother; Natalie Gitelman, the director of the House of Representatives Child Care Center; Twara Taylor, early childhood education specialist at Georgetown University Hospital; Debbie Reagan, speech and language teacher; and Dr. Anne Kendall, her psychologist.

We all decided that Kelly needed a special placement where she can receive both OT and speech and language therapy and where her ADHD can be addressed appropriately. We developed a list of criteria that would have to be met: a small classroom with a student/teacher ratio of not more than six to one; a highly structured environment to address her attentional needs and to maximize her strength; coordination of extra services with the classroom teacher.

In January of 1992, we began to investigate if Alexandria City Schools could meet her needs and to determine if she would be eligible for speech education services. In April, Kelly was found eligible for special education services as a developmentally delayed student.

In the eligibility meeting, Kelly's classroom teacher from the Lab School was not allowed to attend. The Federal regulations state that a teacher must be invited to attend since the teacher has the most knowledge of the child other than the parents. This wasn't permitted in Virginia.

We also strongly objected to the term "developmentally delayed" in reference to Kelly. We knew Kelly's strengths and weaknesses. We wanted her eligibility to reflect her needs. The term "developmentally delayed" was too broad. We looked for a more specific label of LD and ADHD.

We had enough private testing to clearly show that Kelly was learning disabled. Alexandria City Schools stated to us that all of this was covered under the term "developmentally delayed" so that it was not in Kelly's best interest for more specific labels at her age. In hindsight, this was just another excuse, we believe, so that Kelly could be placed in a more general classroom, one not specifically suited to her needs. Here again, we're talking about money, gentlemen.

So we now begin the IEP process. During these meetings, Alexandria City Schools did not attempt to contact her teachers or any other professional that worked with Kelly. Also, the school system was still very much against labeling Kelly LD or ADHD. Our repeated objections to the term "developmentally delayed" were routinely dismissed.

Also, Alexandria City Schools stated that Kelly had to receive her art and music periods with physically handicapped students because there was nothing else available for her. We strongly expressed our objection to this arrangement and were again overruled at every point.

Now we come to placement. How can the Alexandria City Schools determine an accurate placement for Kelly when her parents and teachers and those best qualified to make an evaluation are shut out of the process?

Alexandria City Schools finally recommended a placement at John Adams School. Joan Rose and Dr. Anne Kendall then went to observe the class at John Adams School.

It was lunchtime when they arrived. The children were observed in the lunch room—that is, the developmentally delayed so-called class was observed in the lunch room, unattended with several running around the table and two others on the floor under the table. Neither Dr. Kendall or Joan saw any person supervising the children. Kelly is so excitable that we were afraid that she would hurt herself or another child in this type of situation.

Then when we went to the classroom and found that the teachers were alone in the classroom having their lunch. Can you imagine any kindergarten class left unattended in a lunch room, especially children with special needs and attention problems? Kelly would have been the brightest child in the class by two standard deviations and the only significantly LD child in the class.

The teacher was going to use sign language with a hearing impaired child. The school system was aware that Kelly was highly distractable and that sign language could add greatly to that problem.

Of course, we did not feel that this placement was appropriate for Kelly and we did not accept this placement for her. We went through the hearing process and were unsuccessful. We appealed the hearing officers' decision and were unsuccessful.

In Virginia, the hearing officers are trained by the school system. The hearing officer just did not understand Kelly's problems or the solutions that were being considered. We argued that Alexandria City Schools did not find Kelly ADHD or LD because they did not have any specific programs available for her. Also, they did not contact any of Kelly's teachers or professionals who had worked with her and knew intimately Kelly's strengths and weaknesses.

During this time, Alexandria City Schools committed many procedural violations of the law; however, none of that was thought serious enough by the hearing officers to overturn the decision.

Our case is one of many where school systems are failing children with special needs. Luckily, we've got the resources to afford private placement, which is expensive. Most parents can't get as far as we have and just have to accept what the school system offers. And that's the crime, gentlemen.

Many of these children are bright and could have a great future if the school system would take the time and the trouble and the political risk to find the money to teach them properly.

There are several areas of the law which we think need to be strengthened. Continuum of services should be part of the law.

We need a level playing field for parents. The school systems now have all the power. One way to do this is to allow a private or Federal mediator to be on call throughout the entire process. Mr. Ballenger alludes to this. He is absolutely right.

The mediator should be available at any level in the process and be available to be called in to review all the documents. Mediators should not be used to delay the process and their decision should be binding for the school system.

Parents and the child's teacher should be required to be included in all aspects of the process. Now schools systems are not required to invite parents to the eligibility meeting. Parents and teachers should be required to participate in all phases of the process, from the eligibility meeting to the placement.

Further, the school system should not be allowed to substitute their own teachers in place of a teacher directly connected and acquainted with the child.

Hearing officers must be totally impartial. They should be trained and hired by the U.S. Department of Education, and be required to pass a Federal exam. They should be experts in special education, although not necessarily attorneys.

Children with special needs must have options. Inclusion works for some children, but not for others. The milder the case, the more likely inclusion will work. With severe disabilities, resource rooms, contained classrooms, special schools, or boarding schools are needed so that all learning is individualized according to each child's specific needs and talents. Among the severely LD and ADHD population, speech and language therapy, occupation therapy, and counseling are needed.

The quote "least restrictive environment" should be defined in the law more clearly. Now school systems are using this term to mainstream children. "Least restrictive environment" is not a placement but must be applied appropriately to meet each child's needs.

Children that are ADHD should have a program that is highly structured and stimulating so that their strengths can be addressed and their disabilities won't impede their learning.

Federal law should state that each child must be educated to their maximum potential. We cannot afford to lose these children and let them wind up in the adult education classes in our Federal prisons.

Finally, the existing law has no teeth. It has no teeth at all. Virginia has been out of compliance with this law almost from the start. And I have talked to the compliance officer at the Department of Education who has gone through Virginia. I have a copy of her report and I mean it's just a meaningless piece of paper.

Many States are out of compliance with the law and nothing is being done. This cannot be tolerated and must stop. Monitors need to be sent out to check on State compliance.

And, you know, I certainly hope the School Board Association of State Directors and the American Association of School Administrators will stand up for this kind of toughening of the law, rather than saying they don't have enough money and see no other way to go.

Money needs to be spent to insure State compliance and Federal money withheld if States are out of compliance. With the appropriate intervention, these severely LD and ADHD children can become highly productive members of our society.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Charlie Rose follows:]

HONORABLE CHARLIE ROSE AND
MRS. JOAN TEAGUE ROSE

Thank you Mr. Chairman and Members of the Subcommittee for allowing us to testify today.

My wife and I have been asked to testify about our experiences going through the special education process with our daughter, Kelly, who is now six years old.

Kelly is a very gifted, highly distractible, severely ADHD, LD little girl. How severe is she? When she entered the Lab School of Washington, she could not sit still in a chair for more than two minutes, she could not wait her turn, she could not operate in a group of three children, and was totally driven by impulse. **But**, she could tell you about current affairs and anything you wanted to know about any animal, or the earth and its environment. She could not follow simple questions or offer a response to them. She could not remember names or answer direct questions. She did not have the mechanisms to put thinking to good use. **But**, she was an outgoing, engaging and extremely loving child who wanted more than anything else to learn.

We first realized that Kelly was having problems at about age THREE ~~four~~. The Director of the House of Representatives Child Care Center, Ms. Natalie Gitelman, asked my wife and me to come for a conference. Kelly was getting into fights with other children and not attending at circle time like she should at her age. We subsequently took her to Georgetown University Hospital for testing, where she participated in a battery of tests on three different occasions. The results were: 1) she needed speech and language therapy; 2) she needed to be tested for occupational therapy; 3) she needed behavior modification intervention; and 4) she is at risk for ADHD. Later on, it became evident just how severe her ADHD is. She was tested in Reston, Virginia, by Dr. Karen Miller, M.D., F.A.A.P, who stated that Kelly was one of the most severely ADHD children that she had ever seen.

Immediately, Kelly began speech and language therapy with Debbie Reagan and started work on behavior modification with Dr. Anne Kendall, one the foremost child psychologists in Washington. Dr. Kendall began working with us and the child care center to discuss behavior management techniques. She worked with us and Kelly's teachers all summer, and the behavior management program she put in place worked. Dr. Kendall however, again stressed that Kelly showed delays in fine motor skills and suggested an OT evaluation.

In December 1991, Kelly was given a full occupational therapy evaluation at the Lab School of Washington to assess her gross and fine motor capabilities and to determine whether intervention would help. Her scores indicated significant delays in fine motor, and to a lesser extent gross motor skills. The Lab School recommended that Kelly receive regularly scheduled OT twice weekly. She began therapy in January 1992 and is still enrolled in regular sessions.

While Kelly was at the child care Center, we began a team approach to decide the best course of action to take. The team consisted of her mother, Natalie Gitelman, Director of HRCCC, Twara Taylor, early childhood education specialist at Georgetown University Hospital, Debbie Reagan, speech and language teacher, and Dr. Anne Kendall, her psychologist. We all decided that Kelly needed a special placement where she can receive both OT and speech and language therapy, and where her ADHD can be addressed appropriately. We developed a list of criteria that would have to be met which included: 1) a small classroom with a student/teacher ratio of not more than 6 to 1; 2) a highly structured environment to address her attentional needs and to maximize her strengths; and 3) coordination of extra services with the classroom teacher.

In January of 1992, we also began to investigate if Alexandria City Schools could meet her needs and to determine if she would be eligible for special education services. In April, Kelly was found eligible for special education services as a developmentally delayed student. In the eligibility meeting, Kelly's classroom teacher was not allowed to attend (the regulation states that a teacher must be invited to attend since the teacher has the most knowledge of the child other than the parents). We also strongly objected to the term developmentally delayed in reference to Kelly. We knew Kelly's strengths and weaknesses, we wanted her eligibility to reflect her needs. The term developmentally delayed was too broad, we looked for a more specific label of LD and ADHD. We had enough private testing to clearly show that Kelly was LD. Alexandria City Schools stated to us that all of this was covered under the term developmentally delayed, so that it was not in Kelly's best interest for more specific labels at her age. In hindsight, this was just another excuse so that Kelly could be placed in a more general classroom, not one specifically suited for her needs.

So, we now begin the IEP process. During these meetings, Alexandria City Schools did not attempt to contact her teachers or any other professional that had worked with Kelly. Also, the school system was still very much against labeling Kelly LD and/or ADHD. Our repeated objections to the term developmentally delayed were routinely dismissed. Also, Alexandria City Schools stated that Kelly had to receive her art and music periods with physically handicapped students because there was nothing else available for her. We strongly expressed our objections to this arrangement and were again overruled at every point.

Now we come to placement. How can the Alexandria City Schools determine an accurate placement for Kelly when her parents and teachers and those best qualified to make an evaluation are shut out of the process?

Alexandria City Schools finally recommended a placement at John Adams School. Joan Rose and Dr. Kendall then went to observe the class. It was lunch time when they arrived. The children were observed in the lunch room unattended with several running around the table and two others on the floor under the table. Neither Dr. Kendall nor Joan saw any person supervising the children. Kelly is so excitable that we were afraid that she would hurt herself or another child in this type of situation. Then when we went to the classroom and found the teachers alone having lunch. Can you imagine any kindergarten class left unattended in the lunch room, especially children with special needs and attentional problems? Kelly would have been the brightest child in the class by two standard deviations and the only significantly LD child in the class. The teacher was going to use sign language with a hearing impaired child. The school system was aware that Kelly was highly distractible and that sign language could add greatly to that problem.

Of course we did not feel that this placement was appropriate for Kelly and we did not accept this placement for her. We went through the hearing process and lost. We appealed the hearing officers' decision and lost that appeal. In Virginia, the hearing officers are trained by the school system. The hearing officer did not understand Kelly's problems or the solutions that were being considered. We argued that Alexandria City Schools did not find Kelly ADHD or LD because they did not have any specific programs available for her. Also, they did not contact any of Kelly's teachers or professionals who had worked with her and knew intimately Kelly's strengths and weaknesses. During this time, Alexandria City Schools committed many

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procedural violations of the law. However, none that the hearing officers thought serious enough to overturn the decision.

Our case is one of many where the school systems are failing children with special needs. Luckily, we have the resources to afford private placement, which is very expensive. Most parents can't get as far as we have and just have to accept what the school system offers. Many of these children are bright and could have a great future if the school systems would take the time and trouble to teach them properly.

There are several areas of the law which we think need to be strengthened:

1. Continuum of services should be part of the law.

2. We need to level the playing field for parents. The school systems now have all the power. One way to do this is to allow a private or a federal mediator to be on call throughout this entire process. The mediator should be available at any level in the process and be available to be called in to review all documents. Mediators should not be used to delay the process and their decisions should be binding for the school system.

3. Parents and the child's teacher should be required to be included in all aspects of the process. Now school systems are not required to invite parents to the eligibility meetings. Parents and teachers should be required to participate in all phases of the process, from the eligibility meeting to the placement. Further, the school system should not be allowed to substitute their own teachers in place of a teacher directly connected and acquainted with the child.

4. Hearing officers must be totally impartial. They should be trained and hired by the Department of Education and be required to pass a federal exam. They also should be experts in special education, although not necessarily attorneys.

5. Children with special needs must have options. Inclusion works for some children, but not for others. The milder the case, the more likely inclusion will work. With severe disabilities, resource rooms, contained classrooms, special schools or boarding schools are needed so that all learning is individualized according to each child's specific needs and talents. Among the severely LD and ADHD population, speech and language therapy, occupational therapy and counseling are needed.

6. The "least restrictive environment" should be defined in the law more clearly. Now school systems are using this term to mainstream children. "Least restrictive environment" is not a placement, but must be applied appropriately to meet each child's needs. Children that are ADHD should have a program that is highly structured and stimulating so that their strengths can be addressed and their disabilities won't impede their learning.

7. Federal law should state that each child must be educated to their **maximum** potential. We cannot afford to lose any children.

8. Finally, the existing law has no teeth. Many states are out of compliance with the law and nothing is being done. This cannot be tolerated and must stop. Monitors need to be sent out to check on state

compliance. Money needs to be spent to insure state compliance, and federal money witheld if states are out of compliance, because, with the appropriate intervention, these severely LD and ADHD children can become highly productive members of our society.

Thank you.

Chairman OWENS. Thank you. Did you say that the teacher was not allowed to attend by Virginia law? Virginia law forbids it?

Mr. ROSE. Let me ask my wife, Joan. In the eligibility meeting Kelly's classroom teacher was not allowed to attend. The regulation states that a teacher must be invited to attend since the teacher has the most knowledge of the child other than the parents.

But Virginia says that they can substitute one of their teachers who could teach Kelly and don't have to actually have Kelly's teacher as a part of the eligibility meeting.

Chairman OWENS. So they insisted they could have a representative, in other words?

Mr. ROSE. The representative would be one of their own teachers, not whoever might have been teaching Kelly at the time, as at the Lab School.

Chairman OWENS. And when you visited the school and the kindergarten class was unattended, was it normal procedure for the teachers to eat alone and the children not to be attended, or did you just take them by surprise?

Mr. ROSE. The teachers in the Alexandria system are supposed to be eating lunch with the children for the first six months, and then after that they let them eat alone.

But here the time we caught them, literally caught them, they were having lunch in the classroom and the children were unattended in the lunch room. And my wife and her psychologist were absolutely shocked at that.

Now, I know we're talking about money. I know that the school system likes to cover everything with one blanket and say we got too many laws and regulations and paperwork to fill out, but Mr. Scott has got it right on the head. I would encourage you to draft this so clearly that it cannot be misunderstood this go-round. We've had a long experience with this Act and it is time for clarity so that these things are not misunderstood.

Chairman OWENS. They are always complaining of us micromanaging in legislation. Do you think there should be more micromanaging?

Mr. ROSE. The Congress wrote the Individuals with Disabilities Education Act and you know how some people used to complain that first apple that the school system ever took led to Federal money taking over the school system. Well, I think those debates are long gone. You couldn't run a school system in this country today if you didn't have Federal money.

And along with the Federal money goes some responsibilities to live up to what the law requires. If they are not doing their job, it is the responsibility of the Congress and this subcommittee, as you are so good at doing, to oversee that process and say, hey, you ain't doing this right. Maybe the regulations and the law are not clear enough, as Mr. Scott has suggested in some points. Let's do it so there can be no misunderstanding.

Yes, sir. If they are not following the law, they need to be micro- and macromanaged.

Chairman OWENS. I find it disturbing that Alexandria spent so much time in the IEP process trying to fit your daughter into a specific disability category. Do you think she suffered because of the preoccupation with labeling or that the labeling is not specific and clear enough?

Mr. ROSE. Well, you are a kind and wise man to be personally concerned about her because of that but, as a practical matter, Kelly was at the Lab School during this process so she personally never had to do what most children have to do, and that is to go throw themselves on the mercy of the local school system, suffer with the process until they fail or become violent, or it becomes obvious that they don't fit in there. And then in the current anticrime mood in the country, they are at risk of being not just called an improperly placed child; they are at risk of being called a criminal and sent to prison.

Chairman OWENS. The legislation talks about parents' rights at a number of places but it's not all together and we wonder if we have a problem not just with parents not knowing their rights, but also with school officials not really knowing the rights of parents.

Would you care to comment?

Mr. ROSE. Yes, sir. I think you are absolutely right and I think it would be very useful in the reauthorization if you could somehow pull the rights of the parents into a more cohesive bundle so that both the school and the parents know what those rights are.

Yes, sir. I agree with that.

Chairman OWENS. Do you think you were a victim of outright hostility from the system, or just incompetence?

Mr. ROSE. Well, I think it was somewhat a combination. There was a little of both of that going on. They were very unhappy with us for daring to challenge the system that they had in effect.

And, you know, I certainly didn't get any special attention because I was a Member of Congress and, if that was Virginia hospitality, I would hate to see what average parents with little education or communicative skills or any money at all would go through when they try to find the proper placement for the poor children in our society.

Chairman OWENS. On several occasions we have had testimony from parents and from parents whose children are attending school in Virginia and we know some of the difficulties, but we are still shocked by the fact that a person in your position had this kind of problem.

Mr. Ballenger.

Mr. BALLENGER. Thank you, Mr. Chairman. Charlie, over the Easter break, since my district doesn't have any towns, I decided I would just go around and campaign, and most of the time I went to schools. And there was a very strong pitch made by a lady who happens to be the chairman of the school board in Wilkes County.

And she said just straight out, "ADH, you've got to do something about it."

Mr. ROSE. The what?

Mr. BALLENGER. The ADD or AD, whatever it is.

Mr. ROSE. ADHD.

Mr. BALLENGER. She said, "We've got a terrific problem. We need some help in Washington. We want you to do something about it." And she said, "And I can support you some of the time but, if you don't do anything about it, I'm not sure how I'm going to do it." And that's from a Republican lady in Wilkes County.

Can you think of a way of strengthening the definition of "least restrictive environment?" I've heard that thing used over and over and over again, and I think it's a way out for school boards in, I guess, the teaching situation to maybe escape responsibility. I don't know.

Mr. ROSE. I think that your specific question is, do I have at the tip of my tongue a definition. The answer is, pieces of it, yes. But I think the point that I would stress is that I'm obviously happy that you've run across it. That definition needs to be spelled out clearly in the law.

I would be very happy to use my wife and I as guinea pigs or with our background experiences to put down on paper some suggested wording. I'll get that to you.

Mr. BALLENGER. Okay. I would appreciate that very much. And not knowing, you know, ADHD children—I mean there are obviously tons of them around, but not really having had any experience in my particular effort in education, do you think that they can be taught in an inclusive setting?

You know, everybody is trying to make everybody inclusive or——

Mr. ROSE. You know, I think some of them can't, Mr. Ballenger. I think some of them with the milder cases can. Our daughter, and we resisted it—oh, we thought it was awful that she would have to take Ritalin, which is a drug that in an ADHD child calms them down so that they—an ADHD will hear everything that's going on in this room. You and I can kind of tune out other noises and voices and sort of concentrate on what you and I are saying to each other. An ADHD child can't do that. The paper shuffling or other things are a total distraction. Their filtering system is not working.

The Ritalin in Kelly seems to calm her down so that she can focus and in the Lab School the teachers know how to take advantage of that span of time when she can be quiet and focused and that's when they cram words and numbers and sentence structures and all that kinds of things in them.

So there needs probably to be a special place in a school system for the more severely ADHD children, and I think that's what the lady in your county was suggesting. They can be horribly disruptive to the class if they are not on medication or if they are being inappropriately placed with other kids.

Other kids will make fun of them. They will laugh at them. They will pick on them. I started seeing Kelly come home from the House daycare center just severely depressed because of the fights that she was getting into and because the little boys were picking on her.

She did not have the skills to verbally— physically she'd pop them right in the face, but verbally she couldn't deal with these young boys' aggressions. And that was a very saddening thing for me to see. I've decided I was ADHD when I came along and I should have had special placement when I was at that age. Maybe most of us have.

But I'm delighted that this lady in your district is aware of the problem.

Mr. BALLENGER. Right. I would like to ask maybe Mr. Scott or you, either one, aren't the Alexandria City Schools supposed to be a pretty classy operation compared to the rest of the schools in Virginia?

Mr. SCOTT. Yes.

Mr. BALLENGER. Thank you, Mr. Chairman.

Chairman OWENS. You aren't laying any blame for the fact that you don't have any towns in your district, are you?

Mr. BALLENGER. Charlie drew my district.

Chairman OWENS. Mr. Scott.

Mr. SCOTT. Mr. Chairman, I notice on the agenda that Alexandria is here to defend itself and I regret I may not be here because I have an amendment on the floor. Representative Jim Moran has expressed an interest in this area and we will be very interested, Representative Rose and Mrs. Rose, in the testimony.

Charlie, did I understand that Kelly is in private school now?

Mr. ROSE. Yes, she is at the Lab School of Washington, which is in the District of Columbia on Reservoir Road.

Mr. SCOTT. Mr. Chairman, when I indicated that the law ought to be extremely clear and beyond any kind of misinterpretation, I'm not married to whether it's in the code or in the regulations. You indicated a reservation about micromanaging and I can certainly appreciate that.

But somewhere along the line when it gets to the school system, it ought to be a bit clearer than apparently it is, either through the statute or through regulation. And I think probably regulation would be an easier place to do it so we're not micromanaging.

But Virginia has managed to get itself in a situation where all of the $50 million that Virginia is entitled to is being withheld now by the Federal Government because we're out of compliance with the interpretation that you can't kick people out of school. You are obligated to educate those with disabilities in districts—I think statewide there are 79 children that have been kicked out of schools.

Well, that is a situation where it is my sense that there may be some interpretation, but it should not be open to interpretation. It ought to be clear whether they can do it or they can't. Period.

Thank you, Mr. Chairman.

Mr. ROSE. Mr. Chairman, just 30 seconds more. To both of you, ADHD is not now defined in the law. One thing that we could do——

Mr. BALLENGER. That's what that lady wanted.

Mr. ROSE. That's what she wants and I think that's what we need to try to come up with to help her. And I thank you.

Chairman OWENS. I may point out that that's another label.

Mr. ROSE. I think labels are fine in sorting out the different types of problems. I know there are problems with the labels if they are misused, but I would urge you to consider the alternatives, and I'm sure you have.

Chairman OWENS. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman.

I particularly appreciated the testimony, Mr. Chairman, about the areas of the law which you think need to be strengthened. I think you had eight specific recommendations here which make a great deal of sense.

You have also identified one of the problems ultimately, and that is a function of money. When we get into an area which says that only about 7 percent of the Federal dollars are going to educate a child with a disability, we've got a problem. And that will be down the road a piece.

I guess as I understood your testimony, there are two steps in this process: the identification or the qualification, and then the actual participation in the program. Is that basically right?

Mr. ROSE. We call it evaluation and then placement.

Mr. BARRETT. Evaluation and placement, right.

Mr. ROSE. Really, my wife informs me eligibility determination, then evaluation, and then a placement.

Mr. BARRETT. Okay. You first determine eligibility. If the child is eligible, then the child becomes a part of the program. Okay.

And did you indicate that there was not enough parental involvement in that process, particularly the first process, the eligibility step?

Mr. ROSE. That was our particular experience in dealing with Alexandria, Virginia. I'm not saying that's universal, but we think that it could be clarified either through the code or through regulations or language that you put in.

Mr. BARRETT. I guess the obvious question, at least to me, is could this be handled through a one-step process?

Mr. ROSE. I don't know the answer to that but if it could be so that everybody's rights were protected—I mean a U.S. Commissioner of Agriculture in North Carolina wears a little button that says attitude on it. He wants all his employees to wear the button that says your attitude is what's important. He works for the Commission of Agriculture.

If everybody had the right attitude, Mr. Barrett, a one-stop process might work. But if people have got hidden agendas on either side as to why they're going through this process or why they're going to manage the result to come out one particular way over another, then you may need a more spread-out process with more protection. I would love to see a one-stop process with people with the right attitude about it.

Mr. BARRETT. Well, I would hope that the committee, Mr. Chairman, could look into that a little more deeply at some future point in time, including the involvement of parents in that first step.

Thank you.

Mr. SCOTT. Mr. Chairman, I was just reading the agenda a little more closely. Alexandria apparently is the location for the association and not the representative of the school system, so we'll have to get with Alexandria more directly.

Chairman OWENS. If you think it's appropriate, we'll invite them. Mrs. Rose, would you like to make a comment? Please feel free to do so.

Mrs. ROSE. The only thing is to respond to your question. After the eligibility meeting there is an IEP process, and during our IEP process we had to come back on three different occasions just for that one process before we ever got to placement.

So I don't know how it could ever be rolled into one time, but it would sure save a lot of time and energy for both the school system and the parents if that's a possibility. But it is a really long, drawn-out process.

Mr. ROSE. One final comment. I think Alexandria got the impression that we had made up our minds that there was nothing in the Alexandria school system that was good enough for our daughter, Kelly, and that we basically wanted them to pay $22,000 a year tuition for her at the Lab School. Nothing could be further from the truth.

We absolutely want our child to be in a public school with children that she plays with in her neighborhood, that she can see and be friends with during the week and on the weekend. She is now in a wonderful school but all the children live in Maryland and so when she goes to a birthday party or they go to birthday parties we have to haul these kids all over Maryland and Virginia.

And so what we really want is for the State and the local units of schooling to get their acts together and, maybe with some help from Congress in redefining all these things, do a better job of providing the service locally.

Chairman OWENS. Thank you very much. We very much appreciate your testimony. The personal nature of it certainly adds to our knowledge and will help us in our deliberations as we reauthorize the bill.

Mr. ROSE. Thank you all.

Chairman OWENS. Congressman Stearns.

Mr. STEARNS. I thank you, Mr. Chairman and distinguished members of the subcommittee. Thank you for inviting me here today to discuss a matter that I believe is important to our public schools and to the safety of our Nation's young people.

Mr. Chairman, we have all been horrified in recent years by violence in our public schools. The tragic shootings at Central High School in Washington, DC, and Largo High School in Maryland were just the latest highly publicized examples of this terrible trend. Schools were once seen as safe havens for learning, but today the violent world around us has increasingly found its way into the classroom.

I wish I could come here today and propose a solution to the overall problem of violence in the schools but, unfortunately, I can't. What I hope to do, however, is to try to bring to your attention how one unintended side effect of a law Congress passed is having a negative impact on our local schools' efforts to stop violence.

The Individuals with Disabilities Education Act, IDEA, was passed to prevent young people with physical or emotional disabilities from being denied access to a public education because of their disability. That is a goal I think we all share.

However, I do not believe that these protections were ever intended to restrict schools from taking immediate action against students whose extreme violent behavior endangers teachers, school workers, and their fellow students.

The amendment I would like you to consider today would state explicitly that the special procedural protection provisions that exist for IDEA-covered students would not apply in those cases where the student had been found in the possession of a firearm or other deadly weapon or had committed an assault with a deadly weapon.

It is my understanding that the regulations that apply to IDEA contain some language related to this matter in Subpart E, Regulations and Procedural Safeguards, subsection 300.513. It's sort of a note in the regulation.

This language reads, and I quote, "While this placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with children who are endangering themselves or others."

This language strikes me as unclear. On one hand, reiterating that placement may not be changed and, on the other, stating that this should not preclude an agency from using its normal procedures. Additionally, most school districts that I have heard from do not seem to be aware that this regulation even exists.

Considering these two factors, it is not surprising that most school districts believe themselves bound by the 10-day suspension standard that resulted from the Hoenig ruling.

The IDEA as it has been interpreted by the courts establishes a double standard for student discipline. In many cases, that double standard is justifiable; however, in those few cases where we see extreme violent behavior or intimidation, that double standard should not be eliminated.

Schools need the authority to deal with instances of violence as the situation warrants. The Federal Government should not undermine that authority.

I would just like to reiterate a comment I made during my colloquy with you, Mr. Chairman, during consideration of H.R. 6 regarding this amendment. The overwhelming majority of children and disability are serious, devoted, devout learners whose effort deserve our support and admiration. In no way is this amendment directed towards them.

I believe the scope of the special administrative protections was never intended to protect the very small number of students whose behavior endanger their fellow students, especially those with disabilities, and teachers.

As you move to reauthorize this important legislation, I ask you to consider my amendment and the potential consequences of leaving this issue unaddressed. Nothing would undermine public support for IDEA more than the loss of the life of a student, especially a disabled student, that could have been prevented had schools had greater flexibility in dealing with violent behavior.

I thank all of you for your hard work on this effort and I hope you'll consider my amendment.

Mr. Chairman, I think as you and I have discussed on the House floor, this is basically allowing the teachers, if a student has a weapon, to use the same procedures with that student as they would with a student who is nondisability student.

So that, in a nutshell, is what we have here. I'll be very happy to answer any questions.

[The prepared statement of Hon. Cliff Stearns follows:]

STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, distinguished members of the subcommittee, I thank you for inviting me here today to discuss a matter that I believe is important to our public schools and the safety of our Nation's young people.

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The Individuals with Disabilities Education Act, IDEA, was passed to prevent young people with physical or emotional disabilities from being denied access to a public education because of their disability. That is a goal I think we all share. However, I do not believe that these protections were ever intended to restrict schools from taking immediate action against students whose extreme violent behavior endangers teachers, school workers, and their fellow students.

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However, this language strikes me as unclear, on one hand reiterating that placement may not be changed and on the other stating that this should not preclude an agency from using its normal procedures. Additionally, most school districts that I have heard from do not seem to be aware that this regulation exists. Considering these two factors, it is not surprising that most school districts believe themselves bound by the 10-day suspension standard that resulted from the Hoenig ruling.

The IDEA, as it has been interpreted by the courts, establishes a double standard for student discipline. In many cases, that double standard is justifiable. However, in those few cases where we see extreme violent behavior or intimidation, that double standard should not be eliminated. Schools need the authority to deal with instances of violence as the situation warrants. The Federal Government should not undermine that authority.

I'd just like to reiterate a comment I made during my colloquy with Chairman Owens during consideration of H.R. 6 regarding this amendment. The overwhelming majority of children with disabilities are serious, devoted learners whose efforts deserve our support and admiration. In no way is this amendment directed towards them.

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As you move to reauthorize this important legislation, I ask you to consider this amendment and the potential consequences of leaving this issue unaddressed. Nothing would undermine public support for IDEA more than the loss of life of a student, especially a disabled student, that could have been prevented had schools had greater flexibility in dealing with violent behavior.

I thank all of you, again, for your time and your hard work on this important issue.

Chairman OWENS. Mr. Scott, you said you had a time problem. Do you have to leave? Do you want to——

Mr. SCOTT. Just very briefly, on what you have quoted here as the provision where they can use the normal procedures dealing with children who are endangering themselves or others, some school systems have the procedure of kicking somebody out one year mandatory minimum suspension.

The problem, aside from whether that's good policy or bad policy, a person with a disability who goes a full year without any education at all is obviously going to be very much behind and have a much more difficult time trying to catch up.

Mr. STEARNS. Now I remember I heard your comment earlier. And that's not—I don't address that. That's not in my intention of this amendment.

Mr. SCOTT. So you're not suggesting that they be kicked out for a full year if that is their normal procedure? What I am suggesting is a double standard may be appropriate for those with disabilities because having been kicked out for a year they would be at such a severe disadvantage, more of a disadvantage than another child.

Mr. STEARNS. I'm just trying to allow safety in the classroom and that children who have disabilities who have deadly weapons that the teacher still has the ability to take steps and not be intimidated.

Mr. SCOTT. To get them out of the regular class but not out into the street where they're not getting any education at all. That's really the question because if they're not in the regular class, the school system has to pay money to educate them somewhere else. So, you have a significant financial impact on how you decide this question.

We're not going to resolve it here.

Mr. STEARNS. No, I know we won't. And I am aware in Virginia there is this controversy.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman.

Chairman OWENS. Mr. Barrett.

Mr. BARRETT. Thank you, Mr. Chairman. You make reference to deadly weapon, found in the possession of a firearm or other deadly weapon, or committed an assault with a deadly weapon. I guess my concern might be whether or not deadly weapon needs to be more carefully defined.

Mr. STEARNS. I think that's a good point. I think it's a good point and, my colleague, we have talked about this. Maybe the individual definition could be a Federal definition, but it also could be a variant in terms of the States. And I would welcome any expertise that the committee has in this reference on how we would define that deadly weapon.

Mr. BARRETT. You agree and you are open to further discussion?

Mr. STEARNS. I am. Yes, sir, I am.

Mr. BARRETT. Thank you. Thank you, Mr. Chairman.

Chairman OWENS. How much of a problem do you perceive we have? Are there a large number of incidents that you have noted that relate to young people with disabilities?

Mr. STEARNS. Mr. Chairman, this came to us through Clay County, one of the counties in my congressional district. And they feel it's a very serious problem. I don't have statistics for you today, but this was brought to our attention and the school system is at a loss on how to handle cases like this because of the, shall we say, lack of definition.

So they would like it more spelled out and I think that's all my amendment does is allow them that capability to make that decision.

Chairman OWENS. There has been quite a bit of discussion about the mislabeling of large numbers of males—black males, Latino males, poor white males—and placing them in disability categories when they really didn't belong there. There were behavior problems but not special education problems. They really didn't belong in special education. IDEA was not a suitable place for them but, in the absence of anything else, schools are labeling them as emotionally disturbed and shunting them into classes for children with disabilities.

So we recognize there is a major problem out there. How do you handle behavior problems? How do you handle disruptive students who have problems that are not really covered by this legislation?

We need other ways to come to the aid of schools that have those kinds of problems. So if you have large numbers of mislabeled youngsters who are being put into this category, I can see why you would have a problem.

It's not that children with disabilities are committing crimes or being disruptive; it's those mislabeled youngsters, who really don't belong in the category in the first place, creating a lot of problems. But I understand why there would be a great deal of concern.

Mr. STEARNS. You are going to a larger question. Are the school systems properly putting testing in place in the IDEA identification learning disability programs and are they identifying students correctly. I agree with you. There is that margin.

Chairman OWENS. But they've dumped a lot of behavior problems——

Mr. STEARNS. [continuing] into that category——

Chairman OWENS. [continuing] who are not under any of these labels or whatever you want to call them. They don't fit into the category of children with disabilities.

There is another kind of problem that they need help with but, in the absence of having that help, they have taken the shortcut and put large numbers of youngsters into programs for children with disabilities that don't belong there.

Mr. STEARNS. I think that's a good point. But, obviously, if that person had a weapon or a deadly weapon, the teacher should still have the option to be able to——

Chairman OWENS. I understand. But I'm going to tell you that the problem has a peculiar twist that we need to deal with as well. We need to find some way to deal with behavior problems and to give help to schools that have extensive numbers of students with behavior problems who are not necessarily children with disabilities.

We certainly appreciate your being so patient, Congressman.

Mr. STEARNS. Thank you.

Chairman OWENS. Mr. Ballenger.

Mr. BALLENGER. Cliff, I think Bill asked you the question I was going to ask you.

Mr. STEARNS. The definition of deadly weapon?

Mr. BALLENGER. Right.

Mr. STEARNS. And I think that's a good question.

Mr. BALLENGER. Appreciate that. And also while I've got the mike I would just like to say that the group of children that came in, young ladies that came in, were from the school that you attended with me down in North Carolina, North Carolina School for the Deaf.

Chairman OWENS. Oh, yes.

Mr. BALLENGER. So the gentleman who is doing the sign language has a pretty good crowd out there watching him right now.

Chairman OWENS. Well, we would like to welcome you. Thank you very much, Congressman Stearns.

Mr. STEARNS. Thank you, Chairman.

Chairman OWENS. Our next panel consists of Dr. Paul B. Houston, Executive Director, American Association of School Administrators, located in Arlington, Virginia; Mr. David Noble Stockford, President, National Association of State Directors of Special Education, located in Alexandria, Virginia; Mr. Jan Richard Garda, Principal of Baldwin High School, Pittsburgh, Pennsylvania.

Gentlemen, we have copies of your written testimony which will be entered into the record in its entirety. Please feel free to make any additional comments or to highlight your testimony, if you prefer.

We will proceed with Dr. Houston.

STATEMENTS OF DR. PAUL B. HOUSTON, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, ARLINGTON, VIRGINIA; MR. DAVID NOBLE STOCKFORD, PRESIDENT, NATIONAL ASSOCIATION OF STATE DIRECTORS OF SPECIAL EDUCATION, ALEXANDRIA, VIRGINIA; AND MR. JAN RICHARD GARDA, PRINCIPAL, BALDWIN HIGH SCHOOL, PITTSBURGH, PENNSYLVANIA

Mr. HOUSTON. Thank you, Mr. Chairman. It is a great honor and pleasure to be able to share some of our thoughts with you this morning on this very important issue that you are wrestling with.

I should tell you that I guess my remarks need to be taken in the context of two points. One is that I am a product of the Cabell County Schools of Cabell County, West Virginia. I grew up with several different labels as I went through the system so I have interesting ideas about what labeling does for people or doesn't do for them.

I have also had the opportunity to attend and graduate from some very prestigious universities in this country and to hold some positions of responsibility in various States and regions in this country.

So I come at this from a very firm belief in the American dream, as I suspect most of you share: that this is a country that's allowed many of us to exceed our roots and go beyond where we may have started. And we do know that for some of our children that dream is more difficult to achieve than for others. We know that race, ethnic background, language barriers, gender, and disability make it more difficult for a lot of our children to achieve the dream than, perhaps, for some others.

So I think that that's a context that's very important for us to keep in mind as we go through this situation. Also, as I look at the disabilities issue, of all those groups that have difficulty accessing the American dream, that's the one group any of us could join at any moment and I think that's a very powerful thing for all of us to keep in mind as we work through these issues.

The other issue is that I've been in this position now for about three weeks so I come to this job burdened by the history of 17 years in the superintendent seat, most recently in Riverside, California. It's a district of about 33,000 students. Prior to that, the superintendent in Tucson, Arizona, a district of about 57,000 students and, prior to that, superintendent in Princeton, New Jersey, a district with only about 3,000 students, a very different kind of community than the other two.

I've also served in North Carolina a couple different times as a teacher and principal and in a few other States. Superintendents tend to be sort of well-paid migrant workers in this country.

I come at this from looking at the general population issue, as well as special education, and trying to balance very difficult, sometimes very acrimonious disputes within that context.

I think that, obviously, it's very good that you're taking a look at this in this law. It's very timely. The good news, in my opinion, about American education is, in many ways, it achieved the mission that was laid out for it back in the 1940s and 1950s in terms of what we were asked to do as a profession.

We are now trying to rediscover what the new mission is for education because the conditions have changed dramatically in this country from what existed a couple of generations ago.

Likewise, with special education, I think the original mission laid out in Public Law 94–142 regarding access for students was an appropriate one which I think generally has been achieved. The question now becomes what do you do for quality. How do you raise the quality for these students, for all students, so that you get results for what's going on? I think looking at this and trying to deal with this is very appropriate.

We're making several suggestions this morning. I'm not going to go into all the detail because it is in the written testimony for you to peruse at your leisure. I'll try to hit the highlights.

We are suggesting that it's probably time for a reexamination of the whole issue of special education. I don't pretend to have the expertise to lay that out for you this morning. I suspect after you've heard a number of panels you would probably be more confused about the situation than you were when you started the process. Obviously, there are a lot of very strongly held opinions from a number of directions of what ought to be done about this.

I think something along the lines that was done with the Chapter 1 commission is an appropriate way of going: including both those in the profession who know and are close up to it, as well as people who have more outside perspective, on what could and should be done, and letting them work together to wrestle through a lot of these issues and deal with some of these definitional problems that you're talking about.

While we're doing that, however, there are a number of specific issues that obviously beg for attention: funding, staff development, discipline issues, placement, and the adversarial nature of the process. They are all things that are ongoing and you're already hearing about that this morning.

We would suggest a couple of things to deal with that. One is to look at moving from process to product. Just like when you run for

Congress, that is your process but, hopefully, once you're elected you are here to do something.

Unfortunately, in special education we often get tied up in the issue of the process of getting the student placed; once they're placed we kind of take by faith that somehow the placement will make sure that the student is successful. I think we need to look at the whole end product of what we are trying to turn out.

We would like to suggest that you look at this, particularly, some of the operating rules that are in effect and get in the way. There is a lot of red tape that goes on in reassessments and reevaluations, and often the thing doesn't really change over time. There are requirements in the law that you redo this every so often whether it's needed or not. Some loosening of that may make sense and needs to be looked at.

I would say the major issue for me, however, is staff development. There is a perception, perhaps, that people in education are reluctant; that professional educators don't want to do the right thing by kids. My experience in the last 25 years is that this is just not the fact. People that chose this profession, whether teachers, school administrators, teachers' aides or whatever, chose it out of a real sense of idealistic service. It's an opportunity to serve children and people want to do the best for children. Sometimes resources get in the way and sometimes our own training and our own lack of knowledge gets in the way.

As we're dealing with increasingly complex student populations, that need for training people and supporting them becomes even more important.

Inclusion. You're going to hear a lot about inclusion. You've already heard a lot about inclusion. There is a lot of debate about whether it's good or bad. Ironically, people are arguing both sides of the argument.

I'm not here to argue the philosophy of inclusion. I think inclusion is appropriate. I think it fits with the American dream that I was mentioning a while ago. It's important for people to have access to whatever they can take advantage of.

The problem with inclusion, from my perspective, is the preparation for it: making certain that the training is there for people that are handling the situation; that students can take advantage of the opportunity once it's laid out. Again, the process of including without the follow-up to make sure that there are adequate safeguards for children in a very difficult situation.

A lot of the inclusion argument deals with the most fragile part of our student population. First of all, we don't know nearly enough about inclusion to know whether it's a good or bad idea, so we are suggesting that we look at some pilot programs and some demonstration projects to determine what is possible and how we can go about best serving those needs. Let's not get caught up too much in the argument of whether it's a good or bad idea. I think that the real issue is can we move forward and do the right job for kids.

In fact, Mr. Chairman, there is a school in your home territory—I don't know that it's in your district—in the 15th district in Brooklyn—I think it's P.S. 274, called the Children's School—that's doing some good things in inclusion. Maybe when you are there, that may be a place you will want to visit at some point.

So, we think that there are some good things going on already. There needs to be more. There is a lot more that we don't know that we need to learn.

Chairman OWENS. The 15th school district or the 15th congressional district?

Mr. HOUSTON. School district 15.

Chairman OWENS. That's not my district. Go ahead.

Mr. HOUSTON. So we would just like to suggest that more demonstration projects be allowed.

The discipline issue has already been mentioned this morning. That's a very tough one, particularly for school administrators. Again, we're not interested in pushing kids out of school. We're not interested in expelling kids for the sake of getting them out.

But we do want to point out that there seems to be a discrepancy between those laws, the particular Goals 2000, which states that students who commit violent acts should be excluded, and the IDEA law, which seems to make it easy.

I had an interesting situation in my most recent district. We had a self-proclaimed student advocate who was working with parents on expulsion procedures, guiding each parent, when the student was put up for expulsion, to ask that the student be put through a special education placement process.

Now, in most of the cases those students didn't qualify for special education, but what it did was it delayed the whole process and created a tremendous backlog of work for everybody. It was really a misuse of what I think the law intended initially for protection of disabled students. So I think we need to look at that issue. You've already heard testimony on that so I won't belabor the point. But I think there are some discrepancies that need to be ironed out and made easier.

We also need to look at the whole early intervention situation, particularly the over-identification that I think I heard you mention a few minutes ago. I think that is a problem and we need to look at ways we can reduce the labeling of students, not just to save school districts money but because a lot of kids don't need those labels and it's not appropriate for them. The ones that do need them and do need the help certainly should get it, but we need to look at that whole issue.

I heard some testimony earlier about the issue of money and, as a school superintendent, I don't want to be up here begging for dollars, but the reality is that school finance is essentially a zero sum gain for most school districts.

You have a finite number of dollars available to the school district. If they go to one student in disproportionate numbers, they are taken from other students. The major battle going on, I think, around a lot of these issues on special education have to do with the fact that we've pitted people against one another, and I don't think that's a particularly healthy way to go as a society and it's not a healthy way for us to serve children that need service.

The fundamental issue is that there are just not enough dollars there. Even back in my days in Princeton we were allocating $80,000 for one child because of the outside placements. That was money taken from the budget that would serve the entire student population.

And it's not that those children should not be served, but when you get into a lot of these placement battles that you've heard about this morning, that's what's going on. So the compromises and the contentious qualities that this debate carries forward have a lot to do with the fact that it is a zero sum gain for school districts. And it's not that people don't want to do right by children, but there is always a balancing act with very limited resources.

I guess I'm sensitive. I've cut nine school budgets in a row over the last nine years and so I guess I'm particularly sensitive to that issue.

We are suggesting several possible steps to ease that. One, I'm sure, is going to be a little controversial but we hope at least you'll think about it; that's the notion of looking at an entitlement program for this over-spending area where there are major excess costs involved for outside placements. That's not a huge portion of the student population, but it does represent a huge piece of the problem in terms of funding.

And we think that some sort of an entitlement program might be appropriate. It would help move the Federal Government towards its original goal of the 40 percent of excess cost. We've thrown some numbers out here in the written testimony. Obviously, your staff are much better equipped than we are to come up with an accurate reading, but we were just trying to do it in terms of looking at scope.

We've also suggested some possible places where money could be found or created to pay for that. Our suggestion is we look at those areas that create handicapping conditions as possible sources for income around the issues of drugs and alcohol and tobacco.

We also are suggesting there are ways to stretch the current money by looking at it more flexibly. I've seen with my own eyes very, very positive activities around the schoolwide Chapter 1 programs, Title I programs, where there are concentrations of students. I think that holds great promise for low-income schools, but I also think the concept of stretching the special education dollars across a whole school population where you have concentrations is also something we should be looking at more seriously.

A great concern of the members of my association is the issue of Medicaid. That is a source of funds that should be available for supporting the activities that are very difficult to access. You heard testimony some time ago by a superintendent in Michigan who I think testified that they gave away 60 percent of the dollars they got back from Medicaid just to get at the money.

I think that the fact that people are willing to go for 40 percent of what's available just to grab that says a lot about the desperation that people feel. There should be a better way of doing it. You also heard testimony that Missouri has a different way of handling that.

The whole issue of making Medicaid money more accessible—perhaps having this committee work with Ways and Means to find ways that school districts can get access to that information so that it could be made easier—is something that we would suggest you look into.

We are also suggesting that you stretch dollars by looking at the formula for IDEA and moving into the 99 percent formula, as is done with Title I. Currently, it is 75 percent with 25 percent going to the States. I'm sure the States have a different idea on this than we do, but if you look at Title I, that seems to work well for Title I. I think it would put more dollars at the local level, which is where the children happen to be. This would be a way of providing limited resources where they are most needed.

Unfortunately, there often is a strong correlation between poverty and the number of the disabling conditions. This calls for looking at some sort of concentration grant idea. There are some school districts in this country that are adversely impacted by concentrations of poverty needing to serve concentrations of children with needs.

Some of these are outside the labeling problem because they have to do with conditions that are very clearly handicapping or disabling and not merely somebody over-identifying a student.

We also are suggesting that special education funds be made more flexible to allow for early intervention programs. In fact, the Brooklyn program which I mentioned is a primary school program.

We know that early intervention saves dollars in the long run and if the flexibility is there to do early intervention in ways that are not currently—you know, we're spending an awful lot of time and money dealing with the problems after they exist, as opposed to trying to prevent them.

Our last concern, and I'll finish with this, is the debate that you've just gone through in the last few weeks on the opportunity to learn standards and the impact for our handicapped and disabled population if we don't look at helping them meet some of these standards. We're not here to argue whether standards are a good or bad idea. I suspect my own membership is very torn on that subject, but that's the law of the land at this point.

The issue becomes how do we make sure that these kids are not adversely impacted because of these standards; that preparation and support be given them before they are held accountable for some of these standards. Raising the bar without helping students be prepared to jump over it is not really doing them a service.

We may feel good that we've passed higher standards, but if we've made their chance at the American dream more difficult in the process, I don't know that we've served them very well.

In summary, we really applaud your efforts at trying to grapple with what we acknowledge and realize is an extremely difficult and complex set of issues that you are going to have to try to work through. If there is any way my association or I can help you in that process, we would be glad to do that.

I appreciate the opportunity.

[The prepared statement of Paul B. Houston follows:]

Paul Houston

AASA would like to thank you, Chairman Owens, for having these hearings to explore how to improve services to handicapped students. The original federal law is now twenty years old and probably needs a thorough review to better fit it to the realities of public education in the coming century. My name is Paul Houston, and I am Executive Director of the American Association of School Administrators, AASA, the professional organization of local superintendents and other local education leaders.

Until about three weeks ago I was Superintendent of schools in Riverside, California, a system of about 33,000 students. So I look at special education from the perspective of a superintendent interested in the achievement of all children. Superintendents know that the only way to achieve a goal is to aim the system at the desired result. Conversely, every system is perfectly constructed to achieve the results that it now gets.

When 94-142 was enacted in 1975, the goal was access to schools for handicapped youngsters. Access isn't the major problem anymore, so tinkering with a law aimed at access won't lead to the new goal of a quality education for every disabled youngster. Modifying IDEA to result in good outcomes for kids requires that good outcomes be made the goal.

Good outcomes are being defined in nearly every state and are the basis of the standards in Goals 2000 and in HR 6, the reauthorization of the Elementary and Secondary Education Act.

We have a number of recommendations for how to make the new standards real for disabled children.

First, the delivery of special education must be completely rethought, much as the Chapter One commission did for compensatory

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education. Those outside the system often see things that those of us in the system miss, but we do understand schools, so both sides are necessary to rethink a process. This joint effort probably needs at least a year, with another six months for everyone with an interest to come before this subcommittee and give their views. From that process should come a consensus. We hope that such a process is not dominated by the Department of Education. Rather, the federal government should be an equal partner with other stakeholders.

While the future is being considered, we must address the principal problems surrounding special education including funding, staff development, student discipline, student placement, program coordination and the adversarial nature of the placement process.

Profound changes must be made if disabled children are to thrive. We must do two fundamental things to improve services, change the emphasis from process to results and institute massive high quality professional development. Changing the emphasis is in part changing the program operating rules. For example, the reevaluation of evaluations every three years could be eliminated for many students or made much more flexible because most handicapping conditions do not change with time, e.g., deafness. Similarly, the language about goals in IEPs could be replaced by using the new standards.

The second fundamental change concerns staff development and is the ultimate key to shifting from a goal of access to results. We must replace the concern of professionals, parents and advocates for process, with a concern for results. Shifting from a program where success is judged by getting a student into a treatment that is acceptable to parents, advocacy attorneys and professionals, to a program focused on learning is not a short haul.

There are, of course, many new staff development needs, perhaps none greater than preparing teachers to work with special educators as more disabled students transition into the general classroom. There is also a need to assist special educators in working with the broader population. Also special educators need to know how to teach collaboratively. These changes are dependent on professional development.

The drive for greater inclusion has made location a more important issue. As you know, the American Federation of Teachers has come out very strongly against including students where teachers are not prepared or there is a lack of adequate support in the classroom. We feel that the philosophy on inclusion is right. Our major concern is that it be done thoughtfully with adequate preparation and support. It is likely that only a small fraction of disabled students cannot spend at least some part of the day with non disabled students.

It is difficult to see how we can put medically fragile students in general classrooms with out massive assistance. But only a tiny segment of students fit the definition of medically fragile. The ultimate key to inclusion like most other school improvements is staff development not to simply include but to include students to improve results. Moving more students from resource rooms for part of the day or from specialized settings for part of the day will not be difficult with adequate support and staff development.

Inclusion will not work unless there is the flexibility we suggested earlier for special education teachers to work with non disabled students in the course of the day.

AASA recommends that a demonstration program be authorized to show how staff development can make a difference in including disabled students in the general classroom, and to identify the level of support needed, over tim., to achieve positive results for included students as well as other students. The purpose of such a demonstration would not be to show that students can be included.

We already know that. What is unknown, particularly where there are concentrations of poverty, is how to make programs such as Title I and special education work together to achieve better results. For older students, the new school-to-work transition programs will need fine tuning to adapt to the needs of disabled students. This is particularly true for the new skill standards that could become yet another barrier for disabled students and another source of contentious litigation for school districts.

Dealing with student discipline, has been made difficult by the rules regarding suspension and expulsion of students with IEPs, called the stay put provisions. While there should be no rush to expel, schools should have the right to remove students who bring weapons on school property or at school-sponsored events. In direct contradiction to IDEA, the gun amendment in Goals 2000 requires schools to have a policy to expel students for one year for having a gun on campus. This contradiction should be resolved in IDEA by creating a limited right to remove students who are a danger to other students and staff.

Tied to the staff development and early intervention is the tremendous over-identification of minority youngsters in certain categories, such as emotionally disturbed or learning disabled. We understand the frustration of teachers with disruptive students, but labeling can doom students to less rigorous content. In a perverse way, labeling rewards school districts by providing additional funding based on the number of students labeled. Schools need funds to adequately serve students who disrupt classes without forcing them into narrow categories. This is an area where special education staff should be able to serve students without labels. Since this also tracks poverty closely, this is yet another reason for additional flexibility in school-wide projects.

Although it is not fashionable to say, the principal problem surrounding special education is funding. Inadequate resources to serve children is the problem not special education. Many of the contentious issues spring from compromises made to deal with chronic under funding. We have six suggestions that when taken together, will make a massive contribution to easing the shortage of funds.

First, a step that would give school districts immediate relief is creation of an entitlement program that would reimburse completely school districts for spending in excess of 2.5 times the districts average per pupil expenditures. The reimbursement could be made annually, as in the school lunch program, so districts could accurately report actual spending. This would act as secondary insurance for the few cases of extraordinary costs that cause such disruption to local budgets.

The extraordinary cost reimbursement would reduce disputes over placements and treatments that are caused by cost considerations, and would be a reasonable way for the federal government to meet its original promise to cover 40 percent of excess costs. All treatments and placements should be eligible for reimbursement from the extraordinary costs fund, including private placements.

We could not find a good estimate of extraordinary costs, but based on experience special education seems to run between 15 and 25 percent of local school budgets. According to the 1993 Digest of Education Statistics, total spending for public schools in 1992-93 was $226.7 billion. In school year 1990-91 11.57 percent of all students were in special education, but only 6 percent of those students were served outside of the local public school district. Most, but not all, of the extraordinary costs will be related to serving the six percent of students placed outside the school district.

Because data are not available from either the Digest of Education Statistics or The Condition of Education we have tried to estimate extraordinary costs. Based on my experience special education costs run between 15 and 25 percent of local budgets. Total special education costs to school districts then probably are somewhere between $33.9 and $56.5 billion. Probably no more than $5-6 billion of those costs are for students who services cost more than 2.5 times the local average PPE, and probably much less.

Under the new budget rules, establishing an entitlement requires paying for it. AASA suggests an additional tax on alcohol and tobacco, and an annual claim on 20 percent of property and cash from federal drug seizures, and a two to five cent per gallon tax on gasoline. Alcohol, tobacco and drugs contribute significantly to the population of children with preventable disabling conditions, and a gas tax is possible because it would have little effect on the economy or the industry. The combination of these revenues should raise enough money to create the extraordinary costs fund. We also recommend that the taxes be clearly labeled so taxpayers would know the purpose of the revenues, we think taxing the causes of many disabling conditions to pay for extraordinary costs of serving disabled students will be easily understood and widely accepted.

A Second step that would stretch funds would be the flexibility to commingle special education funds in Title I school wide projects, with the other state and local special education funds and other federal programs such as Title I, drug education, bilingual education and staff development. The flexibility to commingle all other federal funds is contained in HR 6, so adding special education would simply complete the picture.

Third, the process of claiming reimbursement under Medicaid must be made easier. Because filing claims under Medicaid is so cumbersome few school districts do it, and literally millions of dollars go unclaimed to reimburse schools for health services delivered every day in public schools.

This subcommittee heard from an administrator in Michigan concerning the presidents health care proposal this winter whose school district was paying 20 percent of what was recovered under Medicaid to a consultant who unwound HHS red tape and 40 percent to the state of Michigan for access to medicaid information. Imagine schools so desperate for new funds that they would settle for 40 cents on the dollar. On the other hand, the Medicaid director in Missouri worked with schools and eliminated much of the overhead and included every school district in the state.

Schools should have access to medicaid information to find eligible children. This committee should act with the Ways and Means Committee to develop easy coordination between state Medicaid directors and school districts. We recommend that you not put the state education agencies in this picture, unless the governor and the school districts can agree on that. The fewer hoops we have to jump through the better.

Fourth, we suggest that funds could be stretched by changing the funding formula for IDEA to drive 99 percent of the funds to the local level as in Title I. Currently, 75 percent of funds are awarded based on student counts to LEAs and 25 percent is retained for state use. Many, states pass most of the 25 percent through to LEAs but not do and they don't do it in a fashion that permits the predictability of a formula based on student counts. When special education was just starting the states needed more funds to help begin programs, that phase is over. Now LEAs need funds to operate programs.

Following the logic of suggestion four we also suggest that because there is a close correlation between poverty and students needing special education, even where there is no subjective judgement such as sight and hearing, it seems that IDEA needs a concentration grant factor similar to the concentration grants in Title I. We suggest establishing a new authorization, exactly modeled on the concentration grant language in Title I, equal to at least 10 percent of the authorization for IDEA part B grants to LEAs. Pressure can then be brought to bear on the appropriations committees to fund the additional needs found where there are concentrations of poverty.

A final fund stretcher would be to allow special education funds to be used for early intervention programs that seek to divert children from being labeled for special education. Early intervention is very popular with special educators because it seeks to nip problems in the bud. Some school districts have cut their special education enrollment significantly, pleased parents and children and improved achievement. Early intervention takes additional staff and considerable staff development, but the short-term costs are more than offset by long-term savings and by student successes.

These six recommendations that encompass new funding sources, flexibility and targeting to greatest need should alleviate much of the funding pressure on special education.

A last thought concerns opportunity to learn standards as they might be applied to disabled students. We know of your concern that every student have a real chance to meet the new performance standards. No one with a knowledge of special education can look at the current system and feel that students in special education have a very real chance of meeting or exceeding the new standards. We urge you to consider the processes that are critical to a quality education and ensure that schools have those processes in place before special education students are judged with new high-stakes tests. Although there was concern about simply counting inputs as standards, we look at the Baldridge standards for judging the critical processes in business and the fact that 22 states are crafting that logic (not the same standards) for schools, and ask why is this so difficult to conceptualize at the federal level?

We applaud your desire to look at IDEA honestly in light of changing expectations, and we stand ready to help you in any way we can.

Chairman OWENS. Thank you. Mr. Stockford.

Mr. STOCKFORD. Good morning, Mr. Chairman and members of the subcommittee. My name is David Stockford. I'm the director of the Division of Special Services in the Maine Department of Education and presently have the privilege of serving as president of the National Association of State Directors of Special Education. We appreciate this opportunity and I'm glad that it's also recognized that it is an association representing professionals in State education agencies. Our offices are located in Alexandria, Virginia, and I'm greatly relieved not to have to defend the Alexandria School Department, given the earlier testimony.

I think we have a real opportunity here and I want to put my remarks in the context of looking at the climate of change. You've also dealt with, I think, an issue of looking at history in special education and public policy related to that, so I will highlight some of the remarks that are in our testimony.

We are approaching 20 years experience with Public Law 94-142. The special education community, I believe, now has an adequate time period, significant learnings, and an historical context with which to analyze the past performance and to look at the future.

You are hearing many issues related to present practices as well as issues related to our capacity to respond in an appropriate way to the changing needs of young people throughout our Nation.

I want us for a few minutes to recognize that we believe, and I think the data demonstrates, that IDEA has made significant progress toward the purpose for which is was enacted—the access to educational opportunities and delivery of services to children and youth with disabilities. We are very proud of the accomplishments over the past 18 years.

Three times the number of children are being served, and we can discuss the issue of over-representation as part of looking at that assessment process. The number of special education teachers has increased nearly 60 percent since the 1976–1977 school year.

We also recognize that there is much that needs to be done: the whole issue of inclusion of students with disabilities needs to be in the context of "as appropriate"; the assessment of students' progress, as was just mentioned, and looking at the performance standards and making certain that we look at that progress in the context of peers in regular education; and I don't believe that we can, in fact, ignore the issue of appropriate funding for special education.

The tide in education has turned. The current rhetoric in both education and political circles touts the need for comprehensive systemic reform of American education. As the President two weeks ago signed into law the *Goals 2000: Educate America Act*, the level of commitment on the part of this Congress and this administration has moved beyond rhetoric and into the realm of real possibility for change.

It is imperative that special educators take up this banner of reform and change. NASDSE believes that it is critical for students with disabilities to be included in all the activities and efforts outlined in *Goals 2000*. Unless students with disabilities are given the genuine opportunity to learn, *Goals 2000*, though well-intended, may further the division between, rather than foster the merging of special education and regular education.

Our new challenge is to make the content of the general education curriculum accessible to learners with disabilities. We at NASDSE are firmly committed to taking up the banner of reform and change, and yet believe it is imperative to reiterate with the same firm commitment that the fundamental principles of a free, appropriate public education must in no way be diluted.

Before the enactment of Public Law 94–142, students with disabilities were not allowed full participation in the educational process. The rights and protections of FAPE and other specific procedural safeguards and this whole issue of violence in the schools needs discussion because I think there are a number of significant misunderstandings around what present standards exist.

We believe it is necessary to preserve the rights and protections and, at the same time, insure compatibility with *Goals 2000* and other reform legislation. The connection must be especially strong between *Goals 2000* and IDEA's discretionary programs through which creative, innovative, instructional, and professional development activities are developed and tested. Priority should be given to projects that develop cooperative service delivery and provide assistance and personnel preparation models which will include both regular and special education personnel.

With the reauthorization of those discretionary programs, Congress, with the assistance of ourselves and other organizations, can insure that students with disabilities are full, active participants in a dynamic, evolving system of integrated education, based on high expectations, common standards and positive postsecondary results.

I would like to take a few minutes to look at the historical context and recognize the significant impact in this country of IDEA, section 504 and, most recently, the Americans With Disabilities Act. Significant progress is being made.

The discussion that we've had this morning in looking at how, in fact, we provide discipline for students with disabilities needs to recognize that this long history includes a number of significant court decisions. The development of public policy and discussions must occur within the context of a social and educational policy that has really become inwoven into the practice of special education.

In order to restructure the education system in a way that is meaningful and produces positive outcomes, students with disabilities must have a genuine opportunity to participate in the full range of educational activities. A realistic response to this notion, though, involves an understanding of the special education system as it currently exists. It is an area where we will benefit from much examination.

One issue that is significant across the country is the fact that special education faces a shortage in personnel and the need for critical examination of the system of comprehensive personnel development. School districts across the country—rural, urban, and others—report difficulties in recruiting and retaining qualified teachers, administrators, and related services personnel.

We in special education are involved in a self-examination in looking at and preparing for this reauthorization. The debate over categorical versus non-categorical models of service delivery has intensified.

As of late, IDEA emphasizes the identification, and you've already had a discussion which related to labels. We believe that special education should not be viewed as a place, but rather a system of strategies based on the functional needs of each child.

NASDSE also proposes moving from a strict categorical eligibility standard to a system that focuses on service delivery while maintaining the procedural protections guaranteed under the Act. We have a real opportunity to improve outcomes for students with disabilities. This can only be done as we collaborate with general education.

There are a number of factors which we believe are critical to looking at this. Statistics gathered under the auspices of the Department of Education indicate that we have a long way to go; that many States have a drop-out rate for students with disabilities of over 60 percent. Those students who remain in special education find themselves increasingly isolated from their peers; further, only 40 percent of youth with disabilities are employed after graduation, with less than half of them earning the minimum wage.

Only 14 percent of individuals with disabilities go on to some form of postsecondary education. This is an area which needs immediate attention, particularly when we look at our own definitions in the categories and that nearly 80 percent of the children in this Nation in special education should be considering postsecondary education.

Access needs to move to standards to insure that students with disabilities have successful learning experiences that will prepare them for adult living.

NASDSE's definition of special education is a system of options provided to a student with disabilities to assist the student in meeting performance standards based on high expectations. To insure the success of each student, that system would include the following as individually appropriate: [1] alternatives and modifications to the regular education environment. It is imperative that we look at adaptations to the regular education curriculum. We need to include instruction in alternative methods as necessary for full participation in society.

[2] State-of-the-art technology and your efforts here in Congress to look at and expand opportunities with the continuation of the system technology grant program. We also need to make certain that students with disabilities participate in the accountability standards applied for other students across this country, and yet we also need to focus on the whole issue of making certain that support services for students and families meld the inter-agency responsibilities that exist in most of our communities.

We believe that special education and regular education must begin to see their mission as a collaborative effort that will produce positive results for all students. All students can.

The key to our success, I think, to which we have much to contribute, is the recognition of the critical role of parents. Parents must also encourage the unified approach and must be engaged as full partners in the educational process and in our discussions of the reauthorization.

Resources, as has been indicated, must also be used in a more flexible manner, which would allow us to support the total instructional efforts of the school. State and local staff must be allowed the flexibility to exercise a wide range of creative choices while maintaining all procedural safeguards and the requirements of the individual education program.

We propose an experimental funding model that would allow the use of IDEA funds to support the schoolwide projects funded under Title I of the Elementary and Secondary Education Act. This would enable schools to provide supplemental instruction and assist students with diverse learning needs.

Allowing collaboration between IDEA and Title I teachers for the educational growth of the populations served under these two programs would maximize and expand the use of staff time and expertise, and would move the educational community closer to the ideal of inclusion.

We subscribe to the philosophy of change and growth expressed in *Goals 2000*. We have provided 18 recommendations which we would ask you to consider. I want to close by thanking the Chair and the committee and to recognize your vision with the whole issue that you've stated: there must be fundamental reform. That reform, across the country, can only occur as you continue this effort to build consensus.

You've had many experiences with a wide variety of disability groups and I heard your reference earlier about being caught between some of those debates. It is imperative that you force those within the disability community, within special education, and general education, to come to you with areas where we can agree. I believe the testimony that you will hear will support the fact that there is much more consensus than sometimes our rhetoric would indicate.

Thank you very, very much.

[The prepared statement of David Noble Stockford follows:]

David Noble Stockford, NASDSE President
Director, Division of Special Education
Maine Department of Education

Mr. Chairman and members of the Subcommittee, the National Association of State Directors of Special Education (NASDSE) appreciates the opportunity to address you today regarding the reauthorization of the Individuals with Disabilities Education Act. NASDSE is a professional association representing the State agency administrators of education programs for children and youth with disabilities in the 50 States and federal jurisdictions.

I. A CLIMATE FOR CHANGE

As we move toward the twentieth anniversary of the passage of Public Law 94-142, the special education community now has both an adequate time period and an historical context within which to analyze the past importance and the continued viability of the Act. NASDSE believes that the Individuals with Disabilities Education Act (IDEA) has made significant progress toward the purpose for which it was enacted -- the access to educational opportunities and delivery of services to children and youth with disabilities. We are proud of the accomplishments over the past eighteen years. Three times the number of children are being served. The number of special education teachers has increased almost 60 percent between the 1976-77 and the 1990-91 school years. However, there is much yet to be done: the inclusion of students with disabilities in the regular classroom, as appropriate; assessment of students' progress along with their peers in regular education; and, adequate funding for special education programs.

The education "tide" in America has turned. The current rhetoric in both education and political circles touts the need for comprehensive systemic reform of American education. As President Clinton two weeks ago signed into law Goals 2000: Educate America Act, the level of commitment on the part of this Congress and this Administration has moved beyond rhetoric and into the realm of real possibility for change.

In light of the public outcry for education reform, new challenges now present themselves to all educators and especially to those of us working for quality and equality of educational opportunity for students with disabilities. Special educators must take up the banner of reform and change. Failure to do so could condemn students with disabilities to a segregated, less challenging, and less effective system of education. NASDSE believes that it is critical for students with disabilities to be included in all the activities and efforts outlined in Goals 2000. Unless students with disabilities are given the genuine opportunity to learn, Goals, though well-intended, may further the division between, rather than foster the merging, of special and regular education. Briefly stated, our new challenge is to make the content of the general education curriculum accessible to learners with disabilities.

While NASDSE is firmly committed to taking up the banner of reform and change, we reiterate with the same firm commitment that the fundamental principles of a "free, appropriate public education" (FAPE) must in no way be diluted. FAPE is defined in IDEA regulation as special education and related services which (1) are provided at public expense, under public supervision and direction, and without charge; (2) meet the standards of the State educational agency including the requirements of Part B; (c) include preschool, elementary school, or secondary school education in the state involved; and, (d) are provided in conformity with an Individualized Education Program which meets the requirements under 34 C.F.R. §300.340 - 350.

Before the enactment of P.L. 94-142, students with disabilities were not allowed full participation in the educational process. P.L. 94-142 provided the rights and protections of FAPE and other specific procedural safeguards. It is necessary to preserve these rights and protections and, at the same time, to ensure their compatibility with Goals 2000 and other reform legislation. The connection must be especially strong between Goals and IDEA's discretionary programs, through which creative, innovative instructional and professional development activities are developed and tested. Priority should be given to projects that develop cooperative service delivery, technical assistance, and personnel preparation models between regular and special education. With the impending reauthorization of those discretionary programs, Congress, with the assistance of organizations like ours, can ensure that students with disabilities are full, active participants in a dynamic, evolving system of integrated education based on high expectations, common standards, and positive postsecondary results.

II. THE HISTORICAL CONTEXT

To understand the current status and the future of special education, it is necessary to review the history of social policy related to the provision of educational services to students with disabilities. In the last two decades, we have witnessed a revolution in promoting, protecting, and advancing the educational rights of persons with disabilities. The proliferation of social policy has resulted in educational opportunities for individuals who, twenty years ago, would have been denied access to the public schools. Certainly IDEA and Section 504 of the Rehabilitation Act have been of paramount importance in this regard.

In addition to federal policies, states have enacted statutes and regulations to comply with these federal laws and to create additional protections and processes. Court decisions have, also, had a major influence on this revolution. It is against this backdrop of extensive policy, and its accompanying web of increasingly complex case law, that special education is entering into an era of reform and restructuring. Discussions of the future of special education must therefore occur within the context of a history of social and educational policy that has become inextricably woven into practice.

III. OPPORTUNITY TO LEARN

In order to restructure the education system in a way that is meaningful and produces positive outcomes, students with disabilities must have a genuine opportunity to participate in the full range of educational activities. However, a realistic response to this notion involves an understanding of the special education system as it currently exists. That system has a vast array of configurations, ranging from traditional categorical resource and self-contained classes and separate schools to schools which fully integrate students with disabilities.

At the state level, most special education teacher preparation programs, administration and services remain separate from general education. Some states, however, are moving toward the administration of special education within the general education administrative scheme.

Special education also faces a shortage in personnel and the need for a critical examination of the system of comprehensive personnel development. School districts report difficulties in recruiting and retaining qualified teachers, administrators, and related services providers. Efforts to meet the multicultural needs of our students must also be enhanced through the recruitment of minorities as special educators.

The complexity of a system offering such a wide range of service delivery models and a rapid turnover of staff, with the attendant differences in philosophy and policy, make the realities of change and reform all the more challenging. As special education undergoes a critical self-examination in anticipation of the reauthorization of IDEA, the debate over categorical versus non-categorical models of service delivery has intensified. IDEA currently emphasizes identification of a specific disability, rather than identification of the individual child's abilities and program needs. NASDSE's members believe that special education should not be viewed as a "place," but rather as a system of strategies based on the functional needs of each child. The program should not be driven by a label. NASDSE proposes moving from a strict categorical eligibility standard to a system that focuses on service delivery, while maintaining the procedural protections guaranteed under the Act.

IV. PRODUCING THE DESIRED OUTCOMES

Once the service delivery system is reconfigured to focus on individual needs rather than labels, the next question to be addressed during this reauthorization of IDEA is whether or not access to special education has resulted in the desired outcomes. Several factors point to the fact that access does not equal successful outcomes. Statistics gathered under the auspices of the Department of Education indicate that many states have a dropout rate for students with disabilities of over 60 percent. Those students who remain in special education find themselves increasingly isolated from their peers as they advance into middle and high school. Further, only 40 percent of youth with disabilities are employed after graduation, with less than half of those individuals earning the minimum wage. Only fourteen percent of individuals with disabilities go on to some form of postsecondary education.

Emphasis in the special education system should be redirected from using access as the standard to an assurance that students with disabilities have successful learning experiences that prepare them for independent adult living. Outcomes resulting from FAPE must be examined. States should be required to provide the support systems or opportunities to learn necessary to produce successful outcomes for students with disabilities.

NASDSE's definition of special education is a system of options provided to a student with disabilities to assist the student in meeting performance standards based on high expectations. To ensure the success of each student, that system would include the following, as individually appropriate: (1) alternatives and modifications to the regular education environment; (2) adaptations to the regular education curriculum; (3) instruction in alternative methods necessary for full participation in society; (4) instructional strategies and assessments to accommodate identified needs; (5) state-of-the-art technology; (6) participation in the overall educational accountability system; (7) and, provision of support services to students and families in an interagency framework to allow students participation in the least restrictive environment.

In order to implement this definition, the mindsets of special and regular education must change. Special education and regular education must begin to see their mission as a collaborative effort that will produce positive results for all students. Children, disabled and nondisabled alike, can benefit from participation in an educationally diverse setting that mirrors the diversity of society at large. Parents must also encourage this unified approach and must be engaged as full partners in the educational process.

Resources must also be used in the most flexible manner possible to support the total instructional efforts of the schools. State and local staff must be allowed the flexibility to exercise a wide range of creative choices, while maintaining all procedural safeguards and the requirements of the Individualized Education Program. NASDSE proposes an experimental funding model that would allow the use of IDEA funds to support the schoolwide projects funded under Title I of the Elementary and Secondary Education Act. This proposal would enable schools to provide supplemental instructional assistance to students with diverse learning needs. Allowing collaboration between IDEA and Title I teachers toward the educational growth of the populations served under these two programs would maximize and expand the use of staff time and expertise and would move the educational community closer to the ideal of inclusion.

IV. CONCLUSION

NASDSE subscribes to the philosophy of change and growth expressed in Goals 2000 as a framework for the reauthorization of IDEA. Appended to this testimony are eighteen recommendations that express some of the concerns and issues of the State Directors of Special Education regarding the implementation of IDEA. We are currently in the process of developing a second set of recommendations specifically analyzing the discretionary programs within the reform context. We will pass those recommendations on to the Subcommittee members as soon as they are completed.

We appreciate having had this opportunity to begin our dialogue with you. We anticipate that, as the process of reauthorization develops, we will continue to communicate our concerns and proposals for making the Individuals with Disabilities Education Act a dynamic law that will help to produce educated, employable, and successful citizens.

APPENDIX

Following are the initial issues developed by the National Association of State Directors of Special Education (NASDSE) regarding implementation of the Individuals with Disabilities Education Act (IDEA). The Board of Directors and membership of NASDSE view the process of identification of issues and development of legislative recommendations as an evolving process. Therefore, this is just the first in a series of documents that will address implementation of IDEA.

1. **Promote full funding of IDEA, with a specific time line for achieving that goal.**

   The funding formula in P.L. 94-142 promised that the federal government would provide funds equal to 40% of the average per pupil expenditure times the number of children being served. This promise has never been fulfilled. Rather than a 40% funding level, the 1994 appropriation was closer to 8%.

   With the passage of Goals 2000, the Administration's centerpiece for systemic reform of American education, Congress will codify its commitment to provide a quality education for **all** students, **including** students with disabilities. In light of that commitment, NASDSE feels that this is the appropriate time for Congress to reassess its funding promise for special education.

   The organization supports the concept of the Jeffords Amendment, which would increase the level of education funding by 1% each year until funding reaches 10% of the total federal budget. We would recommend examination of a similar phase-in for special education, which would steadily raise the level of federal funding to the promised 40%. Special educators will find it increasingly difficult to meet the demands of higher standards and improved outcomes for children without a greater infusion of federal dollars.

2. **Reorganize and simplify parents' rights information and develop more "user friendly" formats.**

   Recent research reaffirms the integral role of families in the teaching and learning process. It is particularly essential that parents of children with disabilities be involved. To be full participants in their children's educational program, those parents must have a clear understanding of their rights under the law.

   NASDSE emphasizes that we fully support retention of requirements for parental notice currently in the law. Our concern revolves around how those requirements are operationalized through the existing regulations. Parents should be given the information they need to make informed decisions about their children's education in a format that does not require an attorney to decipher lengthy forms and legal language. Length and content of forms and information should be streamlined without encroaching on parental rights. One possible avenue for addressing this concern might be a collaboration between the Parent Training and Information Centers and the SEAs.

3. **Clarify and strengthen the interconnections between IDEA and other acts relevant to students with disabilities.**

The Americans with Disabilities Act, the Rehabilitation Act, and IDEA should be examined with the objective of conforming definitions and provisions in the three acts that address the rights of and delivery of services to students with disabilities. IDEA should reflect provisions in the Rehab Act that require coordination with IDEA, e.g., CSPD. Conflicts in eligibility for services under the various acts should be addressed, as well as clarification of rights and responsibilities of parents and schools respectively.

NASDSE does not intend, however, to deprive students of protection against discrimination who, by definition and assessment, may not be entitled to special education under IDEA. Rather, the organization intends that provisions of the various acts be clarified to ensure that all rights pertaining are enforced.

4. **Federal monitoring and evaluation should focus on program quality and outcomes for students and compliance with the basic requirements of FAPE.**

The education reform movement has placed great emphasis on the development of performance standards, with accompanying assessments of student outcomes. Special education advocates have sought to have students with disabilities measured by the same high standards. NASDSE members have a serious commitment to this concept. Outcomes must be examined within the context of the provisions of the components of FAPE. Therefore, monitoring should focus on the systems used in states to provide a free appropriate public education.

States should be required to demonstrate that systems necessary to provide FAPE are in place. A system of reporting outcome measures should also be developed in concert with stakeholders. Over time the emphasis of federal monitoring should be on outcomes. Currently, IDEA requires that an annual report to Congress be developed by the Secretary of Education on the status of the implementation of the Act. Although the document provides important and useful data, the reader is not able to ascertain from that data what levels of achievement our students are reaching. NASDSE would support an amendment to the reporting requirements placed on the Secretary to include outcome measures in the Annual Report to Congress.

5. **Require the use of mediation prior to a due process hearing, in order to decrease the adversarial nature of due process proceedings.**

   Parents must have easy access to a system that guarantees their children the rights and protections provided under IDEA. However, in many states when a dispute arises, the only forum available to parents is a due process hearing. It is possible that the first time the parties to a dispute actually meet is at that hearing.

   NASDSE in no way wishes to inhibit or restrict the right of parents to pursue their legal rights. However, many of the concerns that result in due process hearings or court cases could be resolved through less adversarial means. Settling disputes through a more neutral proceeding could result in more open communication if other questions arise. Further, requiring mediation as a first step would in no way preclude parents from pursuing a due process hearing, if they were not satisfied with the results of the mediation.

6. **Review and revise the "highest standard" requirement.**

   With the current shortage of related services personnel, particularly speech therapists, the "highest standard" requirement should be revisited. To receive accreditation, these professionals must meet requirements that more closely follow a medical, rather than educational, model. NASDSE believes that more flexibility is needed in order to increase the number of available personnel, while, at the same time, retaining high educational and professional standards.

   The use of properly trained paraprofessionals must also be part of this discussion. These individuals can provide vital support to related services personnel, freeing the professionals' time for direct service to children, as well as providing some hands-on therapies under close supervision.

7. **Replace the lengthy local IDEA application with a list of assurances.**

   Section 1414 should be amended to allow a simplified local application procedure. When P.L. 94-142 was first enacted, a detailed application procedure was necessary to ensure that states developed programs that met the goals of the Act. However, since the Act has been in effect for many years and programs are well-established, a less cumbersome procedure would suffice.

   As an alternative, LEAs might be required to provide assurances and to identify in a simple format how funds would be used to assist eligible students. At the end of the fiscal year, districts would provide an accounting of expenditure of funds. This would reduce the paperwork load considerably at the local, state, and federal levels.

8. **Develop an experimental model allowing states flexibility in meeting the intent of IDEA, while preserving rights and protections accorded under the Act.**

The current push for education reform must include special education (see #1 and #4 above). However, for special education to be a full participant in the reform process, state and local staff must be allowed the flexibility to exercise a wide range of creative choices. NASDSE cannot emphasize strongly enough that, while designing a creative program that will meet the needs of individual students and improve those students' educational outcomes, all procedural safeguards provided in IDEA must be maintained, including all IEP requirements. This experimental model would include an exploration of flexible funding mechanisms, again maintaining procedural safeguards and maintenance of effort provisions. In line with flexibility in the statute, there would also need to be regulatory flexibility.

As an example of what might be accomplished through this process, NASDSE has proposed that IDEA funds be used to support the Schoolwide Projects under Chapter 1 of the Elementary and Secondary Education Act. Current law prohibits the use of IDEA funds, while allowing the use of funds from other federal programs in schoolwide projects. This proposal would enable schools to provide supplemental instructional assistance to students with diverse learning needs -- students with mild to moderate disabilities and those students economically and educationally disadvantaged. Research has shown that these two groups of students can benefit from the same teaching techniques and learning environments. Therefore, allowing both IDEA and Chapter 1 teachers to collaborate in the educational growth of these populations will maximize and expand the use of staff time and expertise.

This model would also move the educational community closer to the ideal of inclusion. Children with disabilities would be taught alongside their "non-disabled" peers, while the latter would be equally enriched by the experience. Since the two populations mentioned have similar educational needs, segregation of the students with disabilities can serve no positive purpose.

The proposal cited is just one of many alternative schemes that might emerge were SEAs and LEAs allowed the flexibility to explore the array of possibilities. To reiterate, special education will not be a full partner in educational reform if the community is unwilling to undergo a critical self-examination of the kind described.

9. **Reexamine the three-year reevaluation process for its cost-effectiveness and usefulness in providing service to the child.**

While studies show that staff believe the three-year reevaluation to be of value, the type of evaluation conducted is under scrutiny. The justification given most often for reevaluation is the need to review whether the student is still in need of special education services and, if so, whether different accommodations are necessary which would alter the original plan developed by the evaluation team.

Language in the Act should reflect that the reevaluation process is not required to be a repeat of the initial evaluation, but rather a review of the appropriateness of programs and services and a determination of the student's progress under those programs and services. The evaluation process should be designed to provide useful information on a ongoing basis, so that adjustments in the student's program can be made as needs are identified. The review process must be rigorous enough to identify the need for in-depth diagnostic assessment if the situation warrants and to ensure that appropriate services are provided.

10. **Merge the Chapter 1 Handicapped program (P.L. 89-313) into IDEA.**

Although some states use a large portion of their 89-313 funds for specialized services, administrative time and dollars would be saved by having a single funding source for supplementary services for children with disabilities.

The NASDSE Board of Directors supports the following proposal to merge the Chapter 1 Handicapped program into IDEA: 30% of the FY 1993 appropriation for the Chapter 1 Handicapped program would be added to the Part H appropriation for Fiscal Years 1994-1996. Part H lead agencies would receive the amount awarded to the state in FY 1993 for children under three in the Chapter 1 Handicapped program. The remaining Part H funds would be distributed in accordance with the existing Part H formula. Beginning with FY 1994, all infants and toddlers with disabilities would be counted on the IDEA Part H child count. The Chapter 1 child count would be eliminated. At the state's discretion, these funds could be utilized in accordance with the Part H regulations. If such an option is selected, the Chapter 1 regulations would not apply. For FY 1997 and beyond, all Part H funds would be distributed according to the current Part H formula.

11. **Refine the definition of assistive technology and develop a shared funding model among agencies and programs, e.g., Medicaid/HHS, for provision of assistive technology.**

The definition of assistive technology needs clarification regarding what constitutes "personal devices," who owns the equipment, what qualifies as "need," and who is responsible for funding. For example, when a child transitions from Part H to Part B and beyond, the assistive technology device should move with the child. There is also a concern that the typical IEP team may not be qualified to make decisions regarding expensive technology. A possible solution might be a district or regional team with particular expertise in assistive devices.

Education agencies are currently being asked to assume financial responsibility for provision of costly assistive devices, even though the use of and need for these devices are not solely educational. Other agencies may avoid their financial responsibilities if the education agency continues to assume these costs. A funding model should be developed whereby agencies share these costs. Such a model must be carefully crafted to prevent children from losing benefits currently provided or from not receiving needed benefits due to interagency conflicts over funding.

12. **Give priority to projects funded with discretionary monies that develop cooperative service delivery, technical assistance, and personnel preparation models between regular and special education.**

Special education must ensure that it is at the table now and as the efforts to reform American education progress. If special education professionals do not assert themselves, our students will continue to be segregated and will not benefit from the exciting changes that are developing. Therefore, the Department of Education, through its discretionary grant projects, should seize every opportunity to foster links and remove the barriers between regular and special education. We cannot expect the regular education community to believe we are serious about reform unless there is tangible evidence in the form of solid data to support inclusion of students with disabilities. The discretionary grant programs are an excellent starting point.

13. **Replace the child count funding mechanism with a distribution system based on percentage of student population.**

The child count mechanism was developed at a time when data were not available to accurately estimate the number of students in need of special education services. People in the field argue that this funding approach encourages labeling, in essence creating a bounty system for securing added dollars.

NASDSE supports the move toward a neutral funding system that is based on more stable data, such as a flat percentage of total student enrollment or census count. These measures are less subject to manipulation and would deemphasize categorical classification.

14. **Develop a loan forgiveness program for students training in related services who complete a number of years of service in public education upon graduation.**

As was stated earlier (See #6 above) the shortage in related services personnel, including speech pathologists and occupational and physical therapists, must be addressed. Concerns center around recruitment of new students, as well as retention of those already in the field.

Many students are unaware of these professions as career options. Those same students are struggling to meet rising tuition costs. Through a loan forgiveness program, special education would develop a corps of new personnel, and students would be assured of employment upon graduation. The federal government has used this incentive system successfully in the past to attract teachers to public education. Loan forgiveness, in concert with other changes in training and certification, would help alleviate the current shortages.

15. **Amend the "general supervision" provision to require that other agencies, e.g., Health and Human Services, perform and provide payment for medically related services, while conforming to the procedural safeguards required under IDEA.**

In states lacking effective interagency agreements, the education agency finds itself bearing the responsibility for performance of and payment for related services. A statutory framework should be developed similar to the Part H model, requiring interagency participation and collaboration.

The law should clearly reflect interagency responsibility for both the provision and cost of special education and related services. Education, health, and social services are all suffering financial restraints. Shared responsibility would utilize expertise available in other agencies, spread the costs and personnel demands across agencies, and should ultimately result in a seamless system of wrap-around services for all students with disabilities.

16. **Eliminate eligibility labels, placing emphasis instead on the student's individual needs.**

Federal law emphasizes identification of a specific disability, rather than identification of the individual child's abilities and program needs. Special education should not be viewed as a "place," but rather as a system of strategies based on the functional needs of the child. It is essential that educators have a clear understanding of the various disability configurations; however, the disability label should not drive the program.

NASDSE would like to move from a strict categorical eligibility standard. The law should focus on the delivery of services necessary to meet each child's particular challenges, while ensuring that the procedural protections provided under IDEA are maintained.

17. **Clarify "maintenance of effort" and "non-supplanting" concepts as they relate to small school districts.**

Small school districts have, in some cases, found it difficult to apply the non-supplanting requirements. In reviewing OSEP policy letters, it appears that the terms "non-supplanting" and "maintenance of effort" are used synonymously. However, in small school districts, the two may describe unique concepts. In fact, it is possible that small districts may comply with the non-supplanting requirement and still fail to maintain effort.

Allowing flexibility in these regulations would support the Department's interest in moving toward an outcomes-focused monitoring system. Emphasis should be placed on maintenance of quality and continuity in programming, rather than just examining the cost of services. In some instances basing maintenance of effort on an average of several previous years might alleviate this problem. In other cases, a programmatic variable will be necessary.

18. **Include a utilization component in research projects funded with discretionary monies.**

Many excellent research projects are funded each year by the Department of Education. However, people in the field are frustrated by the fact that it is difficult to practically access and apply the results of the research. Therefore, each project should be required to include strategies for access to and use of the information by policymakers, teachers, and administrators, with the primary focus on how that information can be used to improve outcomes for students.

Chairman OWENS. Thank you. Maybe you agree with Mr. Houston's idea of appointing a commission. We'll talk more about that later.

We are going to have to recess now to vote. We will recess for about 10 minutes. I don't want to interrupt Mr. Garda's statement so we will begin with his statement when we return.

Mr. GARDA. That's fine.

[Recess.]

Chairman OWENS. I want to thank you for waiting, Mr. Garda.

Mr. GARDA. Thank you.

Chairman OWENS. Please proceed.

Mr. GARDA. My esteemed colleague, Mr. Stockford, asked me at the break what group I represented. I represent the "Voices from Within." We're at the receiving end of everything I've heard in this room today. I guess you would call that the point of contact where the rubber hits the road.

I'm not here today to talk to you about figures and statistics. I'm going to talk to you about emotions and feelings and concerns, because it's our job as a building principal to make sure that the quality that everyone has been talking about and those rules, regulations, codes, whatever title you want to put on them, get applied and actually show up in resources for children.

The first one I had on my agenda for today is kind of the extreme of what the Honorable Mr. Rose was talking about. About a week ago I had a parent in my office who had asked for a meeting. She came in and was sitting there and wanted to talk to me about placing her child because she was convinced that he was Attention Deficit Disorder.

She reached on into her pack and pulled out a paperback from Walden Book Store. She proceeded to talk to me from highlighted sections of this paperback.

When we started to talk about the needs of her child and to really get down to what her concerns were about him, she told me that she had gone to her medical doctor because her child was giving her problems at home and seemed to be acting out, had a lot of energy and couldn't focus. She had decided, from reading this paperback, that he was an Attention Deficit Disorder child and was kicking in the process for us to start looking at that.

That's an extreme from the Honorable Mr. Rose's case where there was good, solid, medical definition, diagnosis and information to back up a request for the need of a child. That sounds like an innocuous meeting, but that meeting led to several other meetings that require eligibility and so forth and so on. All of that represents time cost and drain.

We were able to meet the needs of this parent's child without using the "label" of learning disability because it was a milder form of dysfunction which we were able to handle under our existing programs.

But you have two sides to that coin. You have the one side that says we have some definitely documented needs and the other side that thought they had documented needs, and can come at the system very heavily. Fortunately, this parent was very accommodating. She listened, agreed, was part of the process and was happy with the result. But you can have the other side of that, that I'll get to.

Discipline. You are asking building principals to have schools of zero tolerance for racial situations, zero tolerance for aggressive behaviors, all of which have been on the increase. You say keep drugs out of schools, you say keep weapons out of schools. At times when we go to hearings we send a very definite message of dual standards.

I don't have the answer to that. I can only give you some frustrating examples. In some cases when the problem is a direct result of the child's disability, I have no problem making accommodations for that child. Other cases are not so simple. For example, a student with a learning disability takes a hit of a joint outside the school and gets caught.

I take him and a regular education student to the board at the same time. The regular education student gets suspended for the remainder of the school year; the student with the learning disability has to be returned because I cannot exceed 15 days.

Everyone talks about alternative programs for discipline. Alternative programs cost money—in Allegheny County, $6,000 to $7,000 per student, if you're going to join a consortium. I am a PD liaison from Allegheny County for IU–3 to the Department of Education. They talk alternatives. Don Carroll says form alternatives programs for discipline.

But the bottom line is there is no money in the State pipeline for alternative programs for discipline and I don't know where you are going to go with the IDEA reauthorization.

You ask us to do commonsense things but, at the same time, we ask where are we going to get the resources to do that? I am very fortunate because I come from a district that has a sound financial base; we have resources.

I have fellow principals who have to use the Robin Hood theory—rob from the rich to give to the poor; move it from this category to that category, much like the gentleman was talking about; take it from a regular education program or even some of the special education programs. You just move the money around. So somebody suffers when we get into those kinds of issues.

I was building principal where we asked to be the first high school to have a total program in special education—it's now called life support—which included, trainable, mentally handicapped children. We asked to have this program. At that time it was called mainstreaming, now it's inclusion. We asked to have those children in our building.

I had a situation where an advocate would not listen to the needs of the child or the needs of the parent and decided that this child, against the wishes of everyone, would be mainstreamed in certain kinds of activities.

One of those activities, against my advice and against the wishes of the parents, was that each morning the children would enter the building through the foyer. The mother said very clearly, "My child won't handle that. When he gets nervous he does strange things. Please don't do that."

The advocate said, "We want everybody to be included, everybody to feel like they're not different."

Skipping to the chase, one morning I was called to that foyer and that poor child was found in the men's room exposing himself as a response to that kind of stimuli.

We, of course, took care of that immediately by assigning an aide to stand next to that child every time he came into the building.

That wasn't child-needs driven; that was advocate-driven. Not all advocates are like that. In this particular case, the advocate would not listen to the needs of the child.

.I had a situation where the district identified, through early intervention, took care of the medical situation of a minority student identified through early intervention. We followed along, tracked the child, provided support services, and provided therapeutic services.

I'm hedging. I'm not going to give you much more information because some of this might involve litigation. After all was said and done, we were beat up over one piece of paper. It's called a service agreement. This wasn't clear to us at the time because the Act came out in 1991.

Because we cared about this child we provided for the needs of this child. This may cost our district thousands of dollars in attorneys' fees because of a piece of paper, not because we didn't comply with the needs of this child. That's not my style and that's not the district's style, and I don't believe that's any principal's style.

I keep coming back to the needs of students. I think that the system needs to be needs-driven, not process-driven. What is the need of the child? What does he need to be successful in that school building? What can the school district, the parent, the advocates, the psychologists, and the social workers do to be realistic about acquiring the financial support to meet them, and be realistic about the timelines needed to ensure a positive school experience?

One district may want to meet these needs immediately; wants to supply that resource, and can meet it immediately. Another district may have no money at all and may need to put it in next year's budget.

But that's not what the rule says. The rule says that you must comply within X amount of days. That totally straps budgets. My colleague to the right of me alluded to that.

Let's not paint pictures of principals and educators as being uncaring people who don't care about the needs of kids. We're not naive. We do understand the need for regulations, the need for the law, and the need for the IDEA to be reauthorized.

We do not hesitate to use extraordinary means to handle the needs of kids. But, at the bottom line of all that, is that whatever you write or whatever the State writes, there is a little paragraph that always says, "The principal will be responsible for the implementation."

I take that responsibility very seriously. At times I get incensed and I get angry that I can be beat up in Federal and State courts and by the Office of Human Relations for trying to do what I feel in my heart is good for children.

It bothers me to have a law that says no matter what you do, you're in violation of this code. It has bothered me for years. I've been in education since 1969. I've been a teacher, a counselor. I'm on the mental health board in my local municipality.

I am by no means a law writer, but I say to you that you should think of what I've said this morning about putting into this reauthorization some opportunities for good faith compliance, some opportunities where people can talk about kids without one group being able to go straight from an initial meeting to an advocate, to an attorney, and into the courts. This ties up enormous amounts of dollars that are needed at the point of contact with kids. It is being spent on experts, attorneys, and my time, guidance counselor time.

I could tell you of hearings where there were 14 people from the school district on one side of the table—teachers, counselors, social workers, administrators, attorneys, and I can go on, all at an hourly rate.

It took me out of my building where I should be working to make the Goals 2000 come alive. Now, if that happens frequently, guess what? Somebody loses. Somebody pays.

I'm being very brief because you've heard a lot. I have some suggestions for you. Go back to what your original focus was. When you are drafting your reauthorization, I hope my words will ring in your ear: What are the needs of the kids? What are the best ways to put people together to talk about the needs so that the situation that the gentleman spoke about this morning doesn't happen?

I'm not placing blame on Alexandria, Virginia. I don't know what they've done in this situation. To do that would be inappropriate.

What I think you can hear is confrontation and anger where there should be caring and cooperation. Make the law consumer-driven. Listen to the voices from within. Talk to parents, talk to principals, talk to teachers. Make sure it's consumer-driven, not just group-driven.

I really suggest that when you send your Federal money to the States that you require a sign-off from local educational agencies and school districts. Make sure we have some input into the State plans.

Have flexible timelines. Don't be so rigid, especially if we can show we're going to meet this need, but maybe not tomorrow, and we make a good faith effort to comply. Right now, if you are not within that 10-day timeline, you can automatically be found in violation of the statute and be taken to court; attorneys' fees can be awarded.

I am not here to do attorney-bashing or advocate-bashing. Heaven knows the media does all that. There are good and bad on both sides. All I'm saying is don't create gaps and holes in your reauthorization so that in five or six years, we are all sitting back here again saying the same things about the same issues and the same concerns.

What is getting ground up in the middle is that we haven't focused the resources at the point of contact in the classroom to help children. I would hope that when you are doing the reauthorization, you don't put yourself in that situation again.

I would like to thank Congressman Goodling and Congressman Santorum for giving me the opportunity to come in here and vent on you. If I sound angry, I'm sorry; I'm not. I came here today because I wanted you to understand that the educational system in this country is not in total collapse. There are caring people working with children. We just need for you and the people at the State level to sit down and focus things back where they belong—at the point of contact with kids.

I have a little plaque in my office which has a long quote, but I thought I would share with you the last two lines because I'm kind of giving you a hint here. "When the best leader's work is done, the people say they did it themselves."

Thank you for the time and thank you for allowing me to address you.

[The prepared statement of Mr. Garda follows:]

Baldwin-Whitehall School District

Baldwin High School • 4653 Clairton Blvd. • Pittsburgh, PA 15236 • 412 885-7500

Jan Richard Garda *Principal*	Richard C. Bechtold *Vice Principal*	Warren L. Frabizio *Vice Principal*	Zeb Jansante *Vice Principal*

SUBMITTED
TO
COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES
APRIL 15, 1994

Congressmen:

My name is Jan Richard Garda. My physical presence as a firing-line building principal will provide rejuvenation to the "Voices from within" that I represent. The voices are the principals from over 40 districts surrounding Allegheny County. I am currently the principal of Baldwin High School. Baldwin is a suburban high school with a population of 1,600 students. In my halls are over 300 special students being serviced by the IDEA, ADA, 504 and the given right to an education.

On April 7, 1994, I was asked by Congressman Santorum to share my background in the administration of three school districts, my experiences with special programs, my tenure as the principal's liaison for the Allegheny Intermediate Unit to the Department of Education, my guidance background, my work on a Local Mental Health-Mental Retardation Board, my membership in the Excellence in Administration Network, and my parenting. I list the above to establish a mental image of my credentials.

Congressmen, I wish to share a vision of how your legislation impacts children at the point of contact in the classroom. Congressmen, the results of your good intentions and money are evaluated daily by building principals. Our rubric is simple - Are we doing what's best for all children?

Congressmen, the following givens need to be clearly stated:

- Principals are principals for all children.
- Before there were acts, laws, mandates, sections, and guidelines; there were caring and committed educators servicing special children.
- Principals are not naive. We realize legislation will always be necessary to avoid abuses.
- Speaking heresy, money alone will not solve the concerns from the voices.
- Principals do not deny the need to provide extraordinary support for special children.

BEST COPY AVAILABLE

- Contrary to the media blitz, American public schools are not in total collapse.

- Without a doubt, in the fine print it will say "The principal is responsible for the implementation."

It is now time to cut to the chase. Every time you enact a law you impact me and my staff. Specifically IDEA, ADA, and 504 revisions have begun to erode my ability to uniformally allocate time, money, staff, and energy to serve children. Since 1990 you have added:

- A room of five (5) autistic children require a teacher, an aide, a variety of support services at an approximate cost of $60-70,000 annually per room. This is an up front cost to the district and my building budget. Compliance is immediate.

- Brain injured children from a car accident after a dance would incur a need for a specialized teacher, aide, and support services. There would be unbudgeted costs needed up front.

- Attention Deficient Disorder children have become the largest/fastest growing population. A child can be labeled ADHD or ADD by a private physician without an educator's input. I recently had a meeting with a parent. The mother decided her son was ADD after reading a paperback purchased at Walden's Book Store. She went to the doctor and convinced him of the symptoms. This well-intentioned parent verbally beat me up in a meeting (while peering over her highlighted paperback). These children have always existed. They were serviced under learning support and with common sense behavior modification.

- Rehab counseling, social work services, parent counseling, and recreational services all require administrative time to ensure people attend from outside services.

- Transition plans must be completed for everyone of 16 years of age or older. Outside agencies are not mandated to attend. The total responsibility rests on my staff and my administrators.

- Assisted technology must be secured, transported, coordinated, and the child trained in the use at no cost to the parent. Often times it may take up to a year to secure a device.

By this point you may be thinking - so what! Isn't that what you get paid to do? Congressmen, there is tremendous monetary involvement and school climate cost to building implementation. I want to remind you of my own and Baldwin Whitehall's commitment to meet the needs of all children including special children. But to pretend legislation has not added significant under-funded drains on already depleted local education funds would be lying.

If federal and state governments continue to enact unfunded legislation, you will continue to drive already distressed districts deeper in debt, fiscally marginal schools to become distressed, and fiscally sound schools to become marginal. I am fortunate to be employed at a district with a history of sound fiscal management, monetary vision, and a stable tax base. Some of my fellow principals are trying to comply with dwindling funds and staff.

We experience:

- A mixed message of a stagnant 25% federal funding level for IDEA.
- The state passes on only 75% of the funds it receives and continues to cap the Pennsylvania State Budget at 610 million dollars.
- Districts like Clairton have been driven into bankruptcy by special education funding formula changes - "smoke and mirrors". Now you have 1.3 million - Now you don't!
- There is no guarantee of funding from either source (state or federal).
- Funding is unpredictable and late in arriving. Local districts are responsible to implement or get beat-up by advocates or their attorneys.

Congressmen, "trickle down" is not only an economic theory. Principals must energize staffs, re-engineer monetary resources (take from other building programs), schedule time, train staffs, commit rooms, commit enormous amounts of time, and age rapidly in the name of compliance. Over 25% of my administrative day may be spent managing IDEA.

I have attempted to provide you with a mental picture of caring educators trying to comply with an ever increasing list of state and federal mandates with less time, less staff, and less money. On top of everything mentioned, your legislation has declared - OPEN SEASON ON SCHOOL?

I am going to share parent, advocate, and attorney abuses of IDEA. Listen for a moment, you can hear the sounds of a building principal and or school system being assaulted in some court or commission over technical interpretations of IDEA. Because of current litigation, I will not identify the origin of the scenarios. Contacted privately, I will provide the documentation.

SCENARIO I

An advocate insisted a school district add a window to a classroom. The room had been selected by the TMH educational specialist. The window would require major construction costs to install in the exterior wall.

SCENARIO II

A life support student (TMH) is forced to attend a local high school as a result of a class action suit that closed the support centers. The parent had openly expressed her preference for the center because of the child's lack of impulse control. Because of forced inclusion, the child's IEP required him to wait for school to start in the foyer. The child was found masturbating in front of other students in the men's room.

SCENARIO III

A school district unilaterally assisted in the diagnosis of a minority student's medical problem early in the child's district experience. Because of a technical (paper) violation of IDEA/ADA, the students's parents acquired an attorney. The district had already committed thousands of dollars to provide all the necessary support. The district may be held liable for fees in the tens of thousand of dollars.

SCENARIO IV

Districts are sued in court for non-compliance of the 10 day rule with fees being awarded to attorneys. Districts have incurred thousands of dollars of expense over technical compliance disputes.

SCENARIO V

A learning support student and a regular education student are both found in the possession of a controlled substance. Both students are given a board hearing under their districts drug and alcohol policies. The regular education student is suspended for the remainder of the semester (45 days). Under IDEA, the learning support student may only be suspended for a total of 10 days. The only recourse is to appeal to a federal judge. What is the message sent? Districts must prove the child's actions are not the result of his disability. Knowledgeable parents have circumvented deserved consequences for their children by abusing the act. All during a time when principals are asked to make schools safe.

Congressmen, the "voices-from-within" are shouting for legislators to enact legislation that "allows for good faith compliance." Not under-funded legislation that is creating a forum for principals and building staffs to be beat-up in federal court, state court, The Office of Civil Right, and the Human Relations Commission over nit-picking non-compliance issues. Congressmen, you are draining the energy and will of firing-line educators.

The legislation has inadvertently created a climate of:

- IDEA is being financed and implemented at a cost to regular education children.
- It's easier to roll over and succumb to advocates while redirecting the cost from regular programs.
- Advocates, parents, and their attorneys can file in federal court, state court, and the commissions. Where is the principal's court?

The "voices-from-within" are suggesting you consider some of the following suggestions:

- Require state governments to acquire sign-offs from local educational agencies (AIU) and school districts for Federal Funds. This will ensure point-of-contact people input into state plans.
- Return to your original focus of a better education for children - instead of lining the pockets of attorneys.
- Make sure that future IDEA legislation and re-authorization are partially consumer driven (principals, local agencies, teachers) not just advocate driven.
- Write mediation steps allowing for "good faith effort" on the part of school districts instead of the current appeal process.
- Allow direct access to federal funds by local educational agencies/or districts to fast track the funds to children.
- Redesign the time lines for compliance to be more flexible and realistic.

Professionally, I am honored to have been selected by Congressman Santorum's office to represent my colleagues. Congressman Santorum is recognized throughout Western Pennsylvania as an agent of positive change for local schools. His physical presence in my school has sent the message of caring from the House to the point-of-contact.

As a guiding light, may I suggest. . . .

"When the best leaders work is done, the people say we did it ourselves".

Chinese Gentleman
690 B.C.

Respectfully Submitted,

Jan Richard Garda

Jan Richard Garda, Principal
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Chairman OWENS. Thank you very much for putting your passionate wisdom on the record. Let me begin, gentlemen, by thanking you all for your very thorough and well-directed testimony. I would like to start with Mr. Houston's suggestion that we follow the experience of Chapter 1 and appoint a commission.

What do you think? Do we just extend the present legislation and let all these very difficult questions be resolved by a commission made up of a cross-section of people—parents, teachers, administrators, et cetera?

Mr. Houston, you think so, obviously.

Mr. HOUSTON. Yes. The thinking there is that obviously there are a lot of changes that have taken place in the last 20 years that have affected—you know, some of them good because progress has been made, some of them maybe not so good because society has changed. There are a lot of issues around this.

I think there are a lot of complications and I think that it is so important. Sometimes I suspect that you sit here as Members of Congress and wonder what it is you do and whether there is any impact and I suspect you hope there is.

And I can tell you there is a great deal of impact, and often impact that probably most of you never intended to have happen when you pass laws and do authorizations.

I just think this one is so complex. Sitting through some of the discussion this morning—and I'm sure you've already heard more than what I heard this morning on this in terms of all the complexities—I think that a lot of it just needs to be worked through in ways that would make whatever you do ultimately wiser; having it worked through in a more in-depth fashion rather than having a limited number of hearings and going out on the floor and proposing stuff.

What happens is that each of you goes back to your own homes and hears horror stories. Those horror stories all sort of accumulate into a situation where, essentially, a law emerges.

That's a part of the process, but there is a part of the process which looks at the whole picture. I just think it's a really complex set of issues that you are trying to grapple with and some in-depth examination would be very useful prior to putting into effect a law that may last for the next 20 years.

So that was where the suggestion grew from.

Chairman OWENS. We not only hear a lot of horror stories, we experience a lot of hostility. In fact, my staff has come to the point where they don't tell my constituents that I am Chair of the subcommittee with oversight responsibilities for special education. They say I have oversight responsibilities for IDEA.

Mr. HOUSTON. It sounds better.

Chairman OWENS. Most people don't understand. That sounds good. Has nothing to do with special education, they say.

Mr. Stockford.

Mr. STOCKFORD. I'm not certain that necessarily the commission. The whole issue of communication is key. I think that in cooperation with the U.S. Department of Education, the States, local administrators and representatives of the disabilities community, that needs to be promoted.

I will use the issue that has surfaced here so many times: violence in the schools. And I am very, very concerned with how that has now been attached to the issue of stay put in special education. I believe it is imperative for us to have some discussion around the incidence with students with disabilities.

I think it is imperative for us to look at the issue of violence in the schools and the issue of weapons. I'm thinking about my flight down here from Maine and my entry into this facility. Attached to my keys is a small knife, which I'm sure under some statute might be considered a weapon.

I think that we need to be looking at how we make certain that there are procedures in place that protect the individual students, allow for safety in the school, and that those practices are used across this Nation.

I am convinced that for many of the issues that are brought to your attention, a school district in this country is being most successful in resolving them. So, communication and our sharing of the practices that are out there are important.

Chairman OWENS. Do you think a commission could get at this?

Mr. STOCKFORD. I think there have to be other means of communication other than just a commission. There needs to be support for sharing the practices that are having a dramatic impact on children throughout this country.

There needs to be the dialogue among the constituencies about the concerns that are brought to your attention. They need to be put in the context of how those conflicts can be resolved.

I believe we can begin with practices at a building level. When we look at special education due process, mediation is a very, very successful intervention used by a number of States. That process can also be employed within the local school district.

Chairman OWENS. Mr. Garda.

Mr. GARDA. I would recommend to you that you identify schools throughout the country, through your blue ribbon program or other means, that are doing it well. Talk to the advocates, talk to parents who are having positive experiences, so that you get a balance when you are looking at this concept or idea of the reauthorization.

If you hear some positives, there has to be somewhere in there that will let you know what is working and what is not and what theme winds through the positive schools. You can then use that as the basis for your writing of your reauthorization.

Whether I would agree with the gentleman that I would not keep it a small group of people, I know when you are talking about the size of this country I might sound ridiculous, but there has to be a way through the networking down through the local agencies that you can retrieve some information.

Chairman OWENS. A commission would have the power to take testimony all over. A commission would have the power to compile records of successful programs. They would have the powers and resources to do all of this.

Mr. GARDA. Then I would support that.

Mr. BALLENGER. And they would have the time, too.

Chairman OWENS. Yes, they would.

Mr. HOUSTON. I would just add that our thinking was driven by what we perceive to be a pretty successful venture with the Title

I commission. They took a very complex set of issues and, by and large, what emerged from that was something that at least the people in my association felt pretty good about.

This is at least as complex as Title I, in my opinion.

Chairman OWENS. Yes, it is.

Mr. HOUSTON. I just think that a similar model might be useful, so that is why we proposed it.

Chairman OWENS. I just checked with my staff and it seems that we did accept a large proportion of the recommendations made by the Title I commission. This problem certainly is as complicated, without a doubt.

Several of you have spoken about the States retaining their share of the funds. Is it about 20 percent or 25 percent?

Mr. HOUSTON. Twenty-five.

Chairman OWENS. And you think that this 25 percent should be passed through to the local level?

What is the experience of States? Are there reports of States having done something useful with the funds?

Mr. STOCKFORD. My colleagues on the panel will probably think I'm speaking in the self-interest of the State education agency, but we have been very, very successful with discretionary funds, recognizing statewide needs for personnel preparation. School districts have been very supportive of our working with teachers statewide which couldn't be accomplished with the amount of money that might have flowed through to the local school districts.

The statute allows for that decision to occur with State participation in the State plan. We are allowed to use up to 5 percent for administration. I think you'll find a good percentage of the States who through local entitlement flow through more than the 75 percent required.

But there are a number of provisions within IDEA where the State education agency has responsibilities—staff development, the comprehensive system of personnel development being one, the monitoring requirements, complaint management. And I think it's an area where we need to work with the local school districts within the State to make certain that that distribution is consistent with everyone's needs.

Chairman OWENS. The largest percentage of the funds are used for training of personnel, you say?

Mr. STOCKFORD. In our State, beyond the local entitlement of 75 percent that we must flow through to the local school districts, the primary target is staff development and parental involvement.

Chairman OWENS. Mr. Garda.

Mr. GARDA. Before coming here today I spoke with Dr. Joe Lagona who is the executive director of the Allegheny intermediate unit, IU-3, in Allegheny County. And we talked about this exact issue.

He focused on having more input in how the dollars are spent. He felt that there should be more participation from local educational agencies and school districts on how the dollars are spent. He did not mention or complain of the 75/25 percent. Of course, there isn't an educator around that won't take more money if we can get more money.

But he talked more about how it's spent, how it's allocated, and how it's focused. That was part of my recommendation: that there be a sign-off on Federal moneys from local agencies so that you can insure that there has been that local input.

Mr. HOUSTON. Well, we suggested the 99/1 split, which is, again, modeled after the Title I model, which we think is not a bad model to look at.

There, obviously, are things that may make special education slightly different than Title I. One thing that occurs to me is the expenditure for due process activities which the State is responsible for overseeing.

So whether it's 99/1, I suppose we could be flexible in terms of discussing our position. The 75/25 ought to be looked at in some form, in our opinion.

Chairman OWENS. The current IDEA child count formula has been criticized by some as providing an incentive for schools to misidentify students as having a disability.

Can we and should we reform the formula to eliminate this kind of incentive; what kind of reform formula would you suggest?

Mr. HOUSTON. Well, I do think it needs to be looked at. I wish I had a good answer to that question in terms of giving you a bright idea. I do think, ironically, that the way it is currently structured, provides the wrong incentive for school districts.

There is also a countervailing force on that. In most districts that I'm familiar with, you don't receive the amount that you spend no matter where you stand.

So it's not that you necessarily are running out and labeling kids just to get more money. Every time my special education director in Riverside came to me with the good news that she had another State unit in special education, I pulled my hair because that only meant that it was going to cost me another X-thousand dollars on top of what the State gave me to pay for the unit because they only paid about 40 percent of the actual cost. So every time we added a special education unit it came out of the general fund budget.

So, the incentives work in both directions. I do think that the whole labeling issue, in general, is something that badly needs to be looked at.

Chairman OWENS. Do you have a comment?

Mr. STOCKFORD. NASDSE would support our looking at the distribution process and how that money is generated from the child count. It is perceived, although I'm not sure I would agree with the observation, that it increases the number of children who are identified.

I think at the local level they know very well that the identification of a student is driven by that child having special needs that require modification to the learning environment, not the fact that they are going to generate a small amount of Federal dollars when you consider what the cost to the program is going to be.

But it does allow for the progress that has been made. In looking to the future, we have standards, particularly, performance standards that include all children. Right now we are counting children differently within IDEA, within the technical education act programs, and within compensatory education. So I think it would be a chance to look at some stabilization of what generates that Federal assistance.

Mr. GARDA. In the State of Pennsylvania they have discontinued excess costs, the cost above the normal cost per pupil expended for special students. They have also capped at $680 million the funding for the special education block. They are moving the funds around but it's, more or less, capped.

They have also turned around the formula for approved private placements in a descending order: at one time, it was 60 percent State support/40 percent local, then it's going to be 60 local/40 State, and then it's going to be pulled away.

All of that brings the cost back to the local school district and eventually brings it back to the local building budget. The law states very clearly, regardless of financial concerns, that you meet the needs of the student, as the gentleman has said.

So the formula funding IDEA—I'm not a number cruncher—but somewhere in that process it's not—I hate to use a bad phrase—trickling down to my local building or our local districts.

In my district we are fortunate enough to have the resources to cover that, but in districts like Clareton in the Monongahela Valley area where the mills closed and became a very depressed area, to give you an example, the State was paying them $1.3 million to fund the special education component but after the formula changed, they got $300,000. They were immediately $1 million short. They ended up—they are a distressed school district. They are under State management and there is no tax base to make up the money.

So in some cases it really put a burden on a system to comply with the regulations when they have nowhere to go for the funds to make up the difference for the needs of the children.

If there is a demonstrated need of a school district you might want to consider some way to get that money fast-tracked to that system to make up that difference when they can't. They want to service that child's needs, but it's difficult.

Chairman OWENS. Thank you. I have a few more questions but I will yield at this point to Mr. Ballenger.

Mr. BALLENGER. Thank you, Mr. Chairman. In your statement about Pennsylvania, Mr. Garda, does the $650 million cap include the Federal share?

Mr. GARDA. I can't answer that, sir. I don't know. Six hundred and eighty million dollars.

Mr. BALLENGER. You were saying that it should become an entitlement program. Being from North Carolina, you really can't fund everything with cigarette taxes, but I know everybody up here is going to try.

What scares everybody to death up here are entitlements because they have no end. If you were to come up with some sort of entitlement for this program, I think at the State level, almost any level since it's a participatory situation, you would have to figure out some way to cap it because I was a county commissioner once and I was in the State Senate, and the basic idea is anything that comes out of Washington that doesn't bring money for the long-term era is frowned on, really.

And I just wondered. You threw up the idea of entitlement with two and a half times and so forth and so on.

Mr. **HOUSTON**. Well, I recognize, first of all, that this is not a good day for the tobacco industry up here so I was hesitant to even bring it up.

We've thought about that. I suppose a start in terms of capping would be to cap it where we are now and we'd be way ahead of the game. I think there is always a sense of whether this is an incentive to just keep adding numbers and numbers.

Again, we suggested it two and a half times, above the two and a half times number, so you've got a major disincentive at the school system side for adding numbers because at two and a half times that's still a pretty good hit on your local district budgets to take care of this thing so people aren't going to go willy-nilly out there and put kids into programs.

But, frankly, if we could get an entitlement indexed at 1993 or 1994 numbers, it would be a start in the right direction in terms of easing what is a considerable hit and what creates a lot of the war that we've talked about this morning.

So, again, we threw the idea out. I think it needs a lot more exploration than we've been able to give it. We do think that conceptually it ought to be looked at as an idea; there may be a capping formula in there that would work for everybody, one that would still ease things.

But I just think that conceptually something needs to be done to deal with what is an immensely disproportionate hit on the school budgets for a very small number of children.

And, again, no one is saying that those particular children do not need those extraordinary services. But, again, as long as you're looking at a zero situation in terms of where the budget goes, you've got a problem, so some sort of additional revenue needs to be generated to make that happen. Our thought was maybe entitling in that one area may be a way to make that happen.

So, we threw out the ideas for you to chew on. We would be glad to continue talking with you about it and trying to explore ways that would make it controllable so it doesn't get out of hand. We're all taxpayers too, so we also worry about racing the spending at the Federal level.

Mr. **BALLENGER**. One congressman that was going to testify today—and I don't know if his idea is still alive—was Congressman Duncan who was going to make a presentation here to eliminate lawyers' fee awards at the administrative level.

What do you think about that proposal; the idea being that you wouldn't have to waste so much time or, at least, cut back a little bit?

Mr. **GARDA**. I think every person should have a right at some point in time to that type of a remedy, but what is happening too often now is it has cut to the chase. It goes straight to the Federal courts.

When districts are sued or served, they are not served in one. The lawyer just hits everything so then you have to go through the same repetitious procedure that I talked about before, trading dollars for representation, salaries, and so forth, to defend yourself.

And 99 times out of 100, or 95 times, just from my experience with it, there is no finding when you get there.

At least the ones I've been a part of, that's not been the finding. It's been, "Well, you were in technical violation because you didn't have a piece of paper, but you did do all these things."

So, yes, I think that would save some of the dollars that you are trying to focus back on children rather on processes.

Mr. BALLENGER. Would you go along with the idea of requiring mediation as the beginning?

Mr. GARDA. There are due process procedures and hearings in place now, but sometimes those get circumvented because the parent decides to cut to the chase.

Again, I'm not an attorney and I don't understand that much of the law, but if there would be a way to require a lot more mediation or meeting time before you could file suit in court, I think that would save a lot of money.

Mr. HOUSTON. I can tell you that when I was a superintendent in Tucson with 57,000 students, I had one full-time attorney who did nothing but special education work, primarily handling fair process hearings. There is no question that has an impact on school districts.

Far be it from me to pass up an opportunity to bash lawyers, but I'm not sure lawyers are the entire problem and I don't know quite what the solution is.

We have made it so easy in this country for people to go after whatever they perceive their rights to be. The mechanism, say it's State or through the Federal Government, to make sure your rights are protected is fairly easy for people to access.

On one side that's very good; that's democracy. We certainly don't want to discourage that. When you're on the agency side or the institutional side of it defending the institution when many of those particular cases may not have merit and, ultimately, are thrown out, the resolution down the road is fine in terms of the institution's outcome, but it's a very expensive process to get from here to there.

A lot of the fair hearing stuff is done without attorneys, but the districts have to make sure that all of the i's are dotted and the t's are crossed or otherwise be susceptible to further litigation down the road, so you end up with a lot of preventive legal work being done as well.

Mr. BALLENGER. I'm just curious as to, from any one of the three of you and maybe all, I mean disabilities in so many cases, and I don't know what percentage there are. But if a person is blind, you know it; if a person is deaf, by the time they get to school, you know that. The obvious disabilities, are they part of this particular problem or are they so obvious that there has been something done in the past to take care of that problem?

And then you come along with this attention deficit disorder that almost nobody recognizes or we don't know.

Mr. HOUSTON. That we all suffer from from time to time.

Mr. BALLENGER. How do you find out if a person has got attention deficit disorder without going through all that stuff that Charlie Rose had to go through with his child?

Mr. HOUSTON. That's the real problem. That's the real issue. Certainly, placements for the more obvious disabilities are easy. Sometimes you have a lot of argument over the proper setting for those students and you get into those kinds of issues. That's where some of the inclusion argument comes from.

All my colleagues were already wrestling with things like learning disabilities. As Chairman Owens mentioned, the over-identification issue is already a problem area.

Now we're adding other things like attention deficit which is clearly a problem, but it seems like it's also becoming a catch-all.

Sometimes when I go to school board meetings, I think most of us in the room probably could be classified from time to time on that subject. So it is a problem.

Mr. STOCKFORD. I think it's imperative to recognize that one of the excellent provisions of IDEA is that we have a comprehensive assessment of the individual child.

I think we can discuss with you at another time the whole issue of the three-year evaluation provision. I think that we have learned and understand too much about the learning process not to have a complete understanding of what is impacting on a child's progress within a learning environment. So that I think that's key.

The other point that I want to make around the issue of procedural safeguards is that it is imperative to look at the large numbers of children and parents who are participating in very successful programs. I would encourage you not to allow our public policies to be driven by the exceptions. We should extend to parents the right to be represented and, at the same time, encourage in a more effective way, the States to work with local school districts to have conflict resolution promoted at the local level where parents sit down with teachers and building principals, and come to some solution, and then move on.

I think the concern, which is legitimate, is "Let's jump to a special education due process hearing; I'm going to get my attorney and I'll see my building principal in the court."

Even with that decision, the bottom line is it's going to be the building principal and those parents who are going to be responsible for that child's educational programming, so that we have an intervention that I think could benefit from promoting some other means of conflict resolution.

I know you've had a long day and will have other activities, but I need to focus on the issue of cost and want to, again, emphasize the level of participation at the Federal level with a number of significant requirements.

I also believe that you need to recognize, at least in my opinion and in the opinion of many of my colleagues, that there has been no Federal legislation that has changed the structure of public education like IDEA; that not many years ago we, in education, felt we could determine who could learn and who could not.

While we look at the cost, the bottom line is, I believe, that it is one of the best returns on investment that this Nation has made. When we look at the cost that will be incurred as a society in dealing with individual differences, we are going to pay at one time or another.

I believe special education and general education have responded to many challenges. We can discuss out-of-district placement costs and others, but it has to be in the context of whether we are getting our return.

I believe that's the challenge you must give us within education: to demonstrate that that investment is making the difference.

Again, thank you for this opportunity.

Mr. BALLENGER. I've got another meeting and I think we've got another vote.

Chairman OWENS. Yes. I don't want to have you gentlemen wait through another vote so if there are other questions, I'll submit them to you in writing. Please feel free to submit any further recommendations. I want to thank you very much for your testimony today and for your patience.

The Chairman would like to note for the record that Congressman Moran was sorry that he could not be here. He has submitted a statement which will be entered in its entirety into the record.

[The prepared statement of the Honorable Jim Moran follows:]

Statement of Representative Jim Moran
Subcommittee on Select Education and Civil Rights
April 14, 1994

Thank you, Mr. Chairman, for giving me the opportunity to testify before the subcommittee. I agree with the concerns of our colleague from Florida, Mr. Stearns, and want to expand upon the issues associated with the problems of disciplining disabled students.

The Individuals with Disabilities Education Act affirms the right to, and guarantees of equal educational opportunities for disabled students. The law guarantees every disabled student a "free, appropriate public education," and I believe we all agree on its importance. However, it appears that in the implementation of this law, the Department of Education is compromising the safety of all students and the education of many disabled students.

Under the Clinton Administration, the Department of Education states that I.D.E.A. guarantees disabled students an education - even if they have faced disciplinary action and were expelled or suspended from school. In our country, all children are guaranteed a free public education, but such a guarantee does not restrict a school system's ability to discipline the average student and remove that student from school.

I understand and support the distinction that has been established recognizing that, in some cases, a disabled student may violate school rules because of problems related to that student's disability. There are procedures and due process established to make this determination and they must be preserved. The cases of concern to us are students whose violations were not found to have been related to their disability.

These disabled disciplined students are ones who have committed assaults on fellow students, have brought guns to school, or have brought drugs into school -- students who have endangered the safety of their fellow students. Two examples in Virginia include one student who was caught selling drugs from his wheel chair and another student with a speech impediment who was bringing homemade bombs to school. We should impliment a clear policy so that school systems understand that I.D.E.A. does not prohibit them from taking appropriate disciplinary action against any student.

For several reasons, all students, disabled and not, are unfairly affected by the Department of Education's implementation of I.D.E.A.'s guarantee of an education for disabled students who have been suspended or expelled:

First, without assurance that an alternative education is being provided to suspended or expelled disabled students, the Department of Education withholds I.D.E.A. grant money that supports the programs making a free public education possible for all disabled children. In Virginia, 128,000 disabled students are being denied over $50 million in grant money by the Department of Education. This penalty appears to conflict with the purpose of I.D.E.A..

Second, by requiring states to provide an alternative educational opportunity to suspended or expelled disabled students, the school system's ability to discipline these students comes into question even when their offense is not related to their disability. Often disciplinary rules and procedures are not sufficient to address the needs of the disabled child.

Thirdly, if a school administrator's ability to punish disabled students is compromised, disabled students may get the message that they are protected somehow by their disability from having to obey school rules and regulations.

We must remember that one of the points of providing disabled students with an equal education is to show them that, despite their disability, they are as much a part of school and society as the next student. This must include teaching and enforcing all applicable school rules and regulations.

I.D.E.A. guarantees disabled students their right to an education, and institutes the special education programs needed to help disabled students overcome their disability. However, with all the confusion and disagreement we have seen on this issue, there appears to be little direction about how, under the law, suspended and expelled disabled students are to be treated.

I have described how 128,000 disabled students in Virginia are being denied the federal funds which support their special education programs because of disciplinary action that may affect as few as 12 students in 5 school systems. Evidently, this is not a problem affecting only Virginia; from Mr. Stearns, we know of the concerns from Florida, and I have heard that New York has also come into conflict with the Department of Education in regard to this issue.

Each state has its individual concerns, and currently pursues them with administrative appeals to the Department of Education or in federal court as Virginia has this year. Despite these avenues of potential resolution, I think that with the upcoming reauthorization of I.D.E.A., we have a real opportunity to address these concerns in a straight-forward manner that continues to protect the rights of the disabled.

We should clarify and ensure that school systems have the ability to determine the rules and procedures by which students are disciplined. As long as students are guaranteed due process, and disabled students have sufficient protection, schools should be able to maintain standards of discipline and punishment. It is ironic that the I.D.E.A. grant money, relied upon by hundreds of thousands of students to support their special education programs, could be held hostage by the regulations in that same act.

Many families with disabled children are enthusiastic that the Clinton administration has begun to provide oversight to ensure compliance with the protections afforded disabled students in I.D.E.A.. I applaud the Department of Education for this improvement. But in the implementation of the law, many children are losing out in my state and in others as a result. I do not want to see disabled children lose their rights or protection under the law, but neither do I want the rest of the disabled students to lose their services.

Mr. Chairman, I hope that in the upcoming reauthorization of I.D.E.A. we may be able to address some of these issues, and would be glad to help in any way I can. I appreciate your consideration of my concerns.

Chairman OWENS. Thank you again. The subcommittee hearing is now adjourned.

[Whereupon, at 12 p.m., the hearing was adjourned, subject to the call of the Chair.]

NSBA
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STATEMENT

FOR THE RECORD

on behalf of the

NATIONAL SCHOOL BOARDS ASSOCIATION

on

THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

Committee on Education and Labor
Subcommittee on Select Education and Civil Rights
U.S. House of Representatives

April 14, 1994

NATIONAL SCHOOL BOARDS ASSOCIATION
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I. INTRODUCTION

The National School Boards Association would like to thank the Subcommittee for this opportunity to present some initial recommendations on the reauthorization of the Individuals with Disabilities Education Act (IDEA).

IDEA, also known as P.L. 94-142, is now over 25 years old and has played an essential role in providing children with disabilities with equal educational opportunities. IDEA has not only helped thousands of Americans lead productive, independent lives, but it has produced benefits for all students and school personnel alike by enriching our appreciation of others and making us aware that students with disabilities make enormous contributions to our society.

NSBA represents the 95,000 school board members nationwide who make the key fiscal and policy decisions for local school districts. Local school boards members thus have first hand experience with how special education programs function at the local level. They are responsible both for assuring a free appropriate public education to students with disabilities and for providing a quality education for the entire student body.

NSBA is presenting recommendations concerning:

1) A realistic basis for inclusion,

2) A fairer distribution of the costs of programs for students with disabilities

3) A more effective coordination of IDEA with health care reform,

4) A safe, secure classroom learning environment for all students

5) The unnecessary expansion of existing special education categories and/or the creation of new categories

6) Containment of the spiraling procedural costs of special education i.e., limiting attorneys fees.

II A REALISTIC BASIS FOR INCLUSION

At the local we see increasing efforts to include students with disabilities in the general curriculum. These efforts are likely to continue. But greater inclusion does not require any changes in federal law. IDEA already requires that students be educated in the "least restrictive environment" and any changes in the law are likely to produce significant disruption at the local level and unnecessary and costly new litigation. Inclusion can work effectively for large numbers of students with disabilities while enriching the classroom

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To promote greater inclusion without providing the resources to make it work offers a false promise of improved opportunities for students with disabilities, and the real possibility of disruptions in the learning environment. The federal government needs to make the resources available to local school districts so special education programming and inclusion can be highly successful.

Likewise, we must accept that full inclusion is not appropriate for some students with disabilities. For some students with disabilities who require extensive individualized assistance or who do not have sufficiently well developed academic or social skills instruction in the general curriculum will not be beneficial. We must also consider the effect full inclusion of students with disabilities in the regular classroom will have on the learning opportunities for their classmates, i.e., the large majority of students without disabilities.

III. A FAIRER DISTRIBUTION OF THE COSTS OF IDEA

To make special education programs work effectively requires above all adequate resources. We must provide students with disabilities with a free appropriate education, but we must also realize this requires a commitment of sufficient resources to do the job. And the reality is the federal government has not lived up to its financial commitments. It established federally protected civil rights for students with disabilities, but it has not backed up its words with the necessary resources.

When IDEA was first passed the federal government made a commitment to funding 40% of the costs of special education programs. However, it now funds only about 8% of these costs and the lion's share of these costs have fallen on local school districts. This is simply unacceptable. The result has been that local school budgets have been severely strained; students with disabilities have not received the best possible services and funds have been diverted away from general education programming. Finally, the federal government's failure to provide the needed support invites a backlash against providing needed services to students with disabilities.

At a minimum the federal government needs to establish a strict timetable for doubling its current per pupil expenditure for students with disabilities. In addition, the IDEA funding mechanism should be changed to increase significantly the share of the funds that go to local school districts. NSBA would also support other mechanisms such as the establishment of a limited entitlement program to assure local school districts receive higher amounts of federal support.

IV. COORDINATING HEALTH CARE REFORM WITH IDEA

In order to help students with disabilities to achieve their full educational potential IDEA makes available extensive related services that are largely medical or health related. These services have helped many thousands of students to succeed in school and beyond.

But in this era of extraordinarily tight school budgets we must recognize that many of these "related services" are so health related that it is more appropriate that they be funded through the health care system than through the public school system. In this way the health of students and the quality of their educational programming can both be enhanced.

Some districts have begun to access Medicaid to gain reimbursement for many health services provided for in the individualized education program. However, it is extraordinarily cumbersome for districts to gain Medicaid reimbursement. Moreover, districts in many states are not allowed to seek Medicaid reimbursement for a broad array of services.

We urge the Subcommittee to insure that more districts can access Medicaid for reimbursement of the most common health related procedures in and to simplify the process for gaining reimbursement. In the case of students who do not meet the eligibility criteria for Medicaid we urge the Subcommittee to consider ways that school districts can more easily access private insurance reimbursement.

V. A SAFE AND SECURE LEARNING ENVIRONMENT

Today one of the greatest concerns of parents is the safety of their children, and many teachers and other school personnel are extremely concerned about their own safety in school. IDEA must be structured so it can complement our other efforts to insure school safety.

In cases where students pose a danger to themselves and others IDEA should impose fewer restrictions on schools' disciplinary policies. Likewise, in cases of less extreme conduct IDEA should not require special treatment for students with disabilities unless there is a direct causal link between a student's disability and his misconduct.

Of course currently the large majority of cases involving dangerous student behavior do not involve students with disabilities. Nevertheless, to maximize the safety of all students as well as the safety of school personnel we must allow schools to adopt appropriate disciplinary policies for the very small number of students' with disabilities who have significant disciplinary or behavior problems.

VI. THE UNNECESSARY EXPANSION OF EXISTING SPECIAL EDUCATION CATEGORIES AND/OR THE CREATION OF NEW CATEGORIES

The right to a free appropriate public education is a valuable civil right. However, this right becomes trivialized as well as a fiscal impossibility if it encompasses every student with modest physical, behavioral, or emotional difficulties.

The Subcommittee has rightly resisted past attempts to establish new disability categories for those deemed to have Attention Deficit/Hyperactivity Disorder, and students with non severe emotional disturbances or with behavioral problems that do not require special education. Creating separate or expanded categories and new labels for these students is neither in the best interests of the students in question nor in the interests of the student body as a whole.

However, the needs of these students are real and need to be addressed. Establishing innovative alternative education programming, making available needed health services through national health care reform, and providing school districts with sufficient resources are what is needed to help these students achieve their full potential.

VII. CONTAINING THE SPIRALING PROCEDURAL COSTS OF SPECIAL EDUCATION I.E., LIMITING ATTORNEYS' FEES

There is both a need for legal protections to insure students can gain a free appropriate public education and a need for an efficient, cost-effective mechanism for resolving disputes over the educational programming of students with disabilities. Unfortunately, the current system is overly adversarial and unnecessarily results in large legal costs.

Numerous school districts are now paying enormous sums for attorneys' fees, and as a result the educational programming is suffering. Moreover, in some cases attorneys can structure their cases to win large attorneys' fees even though the school district is already willing to adopt a specific type of educational programming and services for the student.

We look forward to working with the Subcommittee to produce new rules for awarding attorneys fees which will both protect the rights of students with disabilities while saving limited taxpayer dollars desperately needed for educational programming. We also urge the Subcommittee to explore mediation and alternative dispute resolution techniques as a means to contain the spiraling costs of attorneys fees.

CONCLUSION

The Reauthorization of IDEA presents an excellent opportunity for us to improve the educational opportunities of students with disabilities and to make other needed improvements in the legislation. We look forward to working with the subcommittee during the Reauthorization of IDEA and will be happy to provide additional information to the Subcommittee on these issues.

National Association of State Directors of Special Education, Inc
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1994 ANNUAL MEETING
November 13-16, 1994
Grand Rapids, Michigan

PROGRAM CHAIRPERSON
Gail Lieberman

July 15, 1994

The Honorable Major R. Owens
Chairman, Subcomm. on Select Education
and Civil Rights
518 O'Neill House Office Bldg.
Washington, D.C. 20515

Dear Congressman Owens:

Following are the responses to your questions regarding the NASDSE testimony at the April 14th hearing on IDEA:

1. Categorical Labels: Students have to qualify under a particular category to be eligible for IDEA services. However, some states, for example Massachusetts and South Dakota, use non-categorical special education service delivery systems. Those systems are driven by the instructional needs of students rather than the disability.

   NASDSE would support collapsing the "judgmental" disabilities, -- speech/language, mental retardation, and learning disabilities -- into one generic category. That move toward a non-categorical system must be supported by concomitant changes in federal data collection for teachers and students, both of which currently are category-based.

2. Teacher Training: NASDSE believes that there should be coordination of training funds for special and regular education staff. However, we do not support moving all personnel preparation dollars into Goals 2000 or another similar vehicle. The primary focus of training should be on the categorical program to which the funds are attached. However, within that program focus, training should be provided for all personnel who are responsible for program implementation.

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In section 631 of IDEA, the Act states that nothing shall prevent regular education personnel from benefitting from or participating in training activities conducted under that section. Section 632 states that the grants awarded under that section are for the purpose of establishing and maintaining preservice and inservice programs to prepare both special and regular education personnel to meet the needs of children and youth with disabilities. NASDSE supports the continued use of funds for such activities and believes that an inclusive educational system is impossible without proper training of all personnel.

3. Violence: NASDSE does not support waivers. Rather, the organization supports flexibility within prescribed parameters. The Act already provides, through the regulations and notes to the "stay-put" provision, for the removal of students who are a danger to themselves or others. Furthermore, behavior that is covered under the state criminal code should be referred for police action.

   NASDSE would support a process for changing the student's educational placement, i.e., removing the student from that placement, that would not require intervention by the courts. As an example, the power to approve removal could rest with a hearing officer or an administrative law judge.

I hope that these comments will further clarify NASDSE's positions on these important issues. Our organization would like to continue this dialogue with the Subcommittee as the process of reauthorization unfolds. If we can provide additional information or react to the Subcommittee's drafts as they are developed, please do not hesitate to contact us.

Sincerely,

David Noble Stockford
President, NASDSE

July 29, 1994

AMERICAN ASSOCIATION
OF SCHOOL ADMINISTRATORS
LEADERSHIP
FOR LEARNING

Wanser R. Green
518 House Annex I
Washington, DC 20515

Dear Ms. Green:

Thank you for the opportunity to respond to the issues raised by Chairman Owens. The medicaid issue is very important to solving the funding problem of IDEA, and the stay-put issue speaks to an emotionally charged issue for a small number of students who are dangerous to themselves and others.

We encourage you to continue to examine the medicaid issues with the Department of Education and school administrators as we work on streamlining the policies and procedures. ED has scheduled a meeting for August 15. AASA encourages you to either participate or follow the results.

We have answered your questions in the order asked in Chairman Owens June 23 letter.

Q. What is it about the current medicaid system that makes it so difficult for schools to get reimbursed for medicaid type services?

A. The basic problem with the current medicaid system for school districts seeking reimbursement for eligible special education students is that medicaid is a separate agency with a separate charter.

The difficulties in medicaid reimbursement begin with establishing which special education students are eligible to generate medicaid reimbursements. The list of medicaid recipients is gathered and maintained by the state medicaid agency and the list of special education students is kept by school districts. And, until very recently, there was no list sharing. No list sharing meant that school districts had to send the list of special education students to the medicaid agency and wait to be told which special education students are from families receiving medicaid. Waiting for names to be cleared is time-consuming and requires more handling by clerks.

In some cases where cooperation is better, schools can have on-line access to medicaid records to qualify children immediately, and the error rate is cut to near zero.

An example of the difficulties of reconciling lists is the problem of students with the same names and dates of birth. With on-line access, name problems can be overcome easily with date of birth,

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social security or address information. But, if the state is simply saying yes or no to a list submitted by the school districts, duplicate names cause extra clerical work and delays of days.

A second problem for medicaid reimbursement comes when student's families meet the criteria for medicaid, but do not apply and receive the assistance. Simply being a child in a family that could receive medicaid is not adequate to generate a reimbursement. It seems inconsistent to say that services for children from families living below the poverty line can generate reimbursements, and then to only reimburse for those children whose families actually receive medicaid.

Medicaid eligible is a misnomer--there are only recipients and non recipients. And, only children of recipients can generate a reimbursement.

A third problem with medicaid for school districts comes from the paper work needed to establish a basis for reimbursement. Medicaid providers-that is professionals whose work generates reimbursement-are already doing a lot of paper work for IDEA. The new paper work is resented, even though it is the basis for reimbursement. The paper required by the two systems in each state should be reviewed and reduced by finding overlaps where a school form would suffice for medicaid and a medicaid form would suffice for the schools. Records are critical, but IDEA is already overloaded with paper, and the added paper falls on busy professionals who will no see any benefit from the funds for months or even years.

A fourth problem for the schools is the time lag in the payment process. The federal reimbursement system is slow (Pittsburgh claims it has waited a year for it first payment).

Missouri has streamlined the program by aggressively training school personnel regarding eligibility and then making information available on-line where schools have the technological capability. Missouri also turns information and payment claims around quickly. The Missouri medicaid agency reached out to schools and did the training needed to implement the reimbursement process. School leaders were quick to pick up the ball and make it clear to staff that the extra paperwork was important to kids and would have a payoff. The result is that even small school districts participate. In contrast the Duval County, Florida (Jacksonville) school district, with an enrollment of 110,000, feels there is too much paperwork to apply for medicaid reimbursement.

However, the problems of slow payment and non-reimbursement for students whose family income is below medicaid requirements, but the family has not applied for medicaid still remains.

Q. Would AASA support using IDEA funds to train general education teachers?

A. The short answer is yes? But the longer answer is that training for all teachers administrators and other staff must be focused on getting the best results by dealing in the most effective way possible with each child **according to that child's specific needs and circumstances**. Such training is rare now because we typically spend about 1% of budget on staff development, rather than the 5-8% spent by highly effective businesses.

We need more funds for staff development. If focused in the larger context, such cross-training should be useful.

Q. Should there be waivers for the stay-put rule?

A. Yes, but in a very specific and limited context. First the criteria to waive the stay put rule should be as specific as possible. For example, using the term firearm rather than weapon. And, the criteria should be for legally defined behaviors such as assault, rape and murder.

Then the period of 10 days should be examined. There is a feeling that a longer period for stay-put is needed for complicated cases or criminal cases where fact finding is needed or where finding alternative settings is more troublesome.

But in general, the goal ought to be keeping kids in school and maintaining service for disabled youngsters.

AASA appreciates your open inquiry into these delicate matters where the history of neglect makes many nervous about any change.

Sincerely,

Paul D Houston

Paul D. Houston, Ed.D.
Executive Director

cc: Bruce Hunter

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COMMITTEE ON EDUCATION AND LABOR
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WASHINGTON, DC 20515-6107

SUBCOMMITTEE ON SELECT EDUCATION AND CIVIL RIGHTS

June 23, 1994

Mr. Jan Richard Garda, Principal
Baldwin High School
4653 Clarion Boulevard
Pittsburgh, Pennsylvania 15236

Dear Mr. Garda:

The Subcommittee would appreciate your response to the following question as a follow-up to the April 14th hearing on IDEA:

> On the issue of violence, should there be other waivers to the "Stay-Put" rule beyond just carrying a deadly weapon (e.g., if a student attacks another student, or if there are criminal charges like assault, rape, or murder pending against a student)?

Please forward this additional information to Ms. Wanser Green of the Subcommittee staff within the next week so that we can complete our hearing record.

Thank you again for your thoughtful and informative testimony.

Sincerely yours,

Major R. Owens

MAJOR R. OWENS
Chairperson

Baldwin-Whitehall School District

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Jan Richard Garda *Principal*
Richard C. Bechtold *Vice Principal*
Warren L. Frabizio *Vice Principal*
Zeb J[illegible] [illegible]

June 29, 1994

Ms Wanser Green
Committee On Education And Labor
U S House of Representatives
Subcommittee On Select Education And Civil Rights
518 House Annex 1
Washington, DC 205 15-6107

Dear Mrs Wanser Green,

As a building principal with a long history in this area, my response to the attached is simple

> Principals are accountable for the safety of all students, handicapped or non-handicapped Any student participating in aggressive behaviors of such severity requiring school board or police action should be subject to the same consequences

Call me personally if you wish me to participate on a national commission I would do so at my own expense I am committed to the concept of the need to reauthorize I D E A with "common sense" revisions

Sincerely,

Jan Richard Garda
Principal

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